

**NZ RegCo**

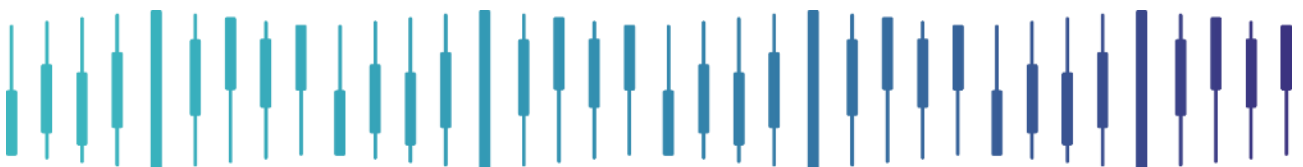
NZ'S LISTED  
MARKET REGULATOR

7 December 2023

# NZ RegCo Decision

GEO Limited ("GEO")

Application for waiver from NZX Listing Rule 5.2.1



# Waiver from NZX Listing Rule 5.2.1

## 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 Rule to which this decision relates is set out in Appendix Two to this decision.
3. Capitalised terms that are not defined in Appendix One to this decision have the meanings given to them in the Rules.
4. NZX Regulation Limited (**NZ RegCo**) notes that a revised Major and Related Parties Guidance Note will become effective on 18 December 2023. NZ RegCo has considered the incoming guidance in making the decision to grant these waivers.

## Decision

5. Subject to the conditions set out in section 6 below, and on the basis that the information provided by GEO is complete and accurate in all material respects, NZ RegCo grants GEO:
  - a. a waiver from Listing Rule 5.2.1(a) to the extent the Fees payable to NRP under the NRP Mandate may otherwise require GEO to seek shareholder approval to the entry into the NRP Mandate; and
  - b. a waiver from Listing Rule 5.2.1(b) to the extent any Transaction that becomes a Material Transaction to which NRP is, or is likely to become, a beneficiary of as a result of the Fees payable under the NRP Mandate would otherwise require GEO to seek shareholder approval.
6. The waivers in section 4 above are provided conditional upon:
  - a. all Independent Directors of GEO certifying (on behalf of the GEO Board) that:
    - i. the terms of the NRP Mandate have been (and the terms of any Proposed Transaction will be) negotiated on an arm's length basis independently of Roger Sharp;
    - ii. the NRP Mandate has been (and any Proposed Transaction will be) considered independently of NRP and Roger Sharp, and Roger Sharp did not unduly influence GEO's decision to enter into the NRP Mandate (or undertake any Proposed Transaction) or vote on any resolution to approve the entry into the NRP Mandate (or any Proposed Transaction); and
    - iii. entry into the NRP Mandate is in the best interests of GEO and all of GEO's shareholders who are not NRP or Associated Persons of NRP;
  - b. the waivers, their conditions and implications being disclosed in GEO's next annual report; and
  - c. GEO releasing a statement through the NZX Market Announcement Platform about its entry into the NRP Mandate and why it and the waivers are in the best interest of GEO and its non-interested shareholders.

## Reasons

7. In coming to the decision to provide the waivers of Rule 5.2.1 set out in section 4 above, NZ RegCo has considered that:
  - a. The policy behind Listing Rule 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the Board may have been subject to actual or perceived influence from a Related Party. Granting this waiver will not offend the policy behind this rule.
  - b. GEO has submitted, and NZ RegCo has no reason not to accept, that NRP (as the Related Party) is unlikely to have any influence over GEO's decision to enter into the NRP Mandate as:
    - i. in relation to the waiver of Rule 5.2.1(a):
      - A. the NRP Mandate does not give rise to the policy concerns addressed by the Rule as the nature of the relationship, being one where NRP will advise GEO in the ordinary course of NRP's business, is not one that gives rise to a potential undue influence and transfer of value;
      - B. the NRP Mandate has been negotiated on an arm's length basis independently of Roger Sharp and, accordingly, the NRP Mandate has been (and any Proposed Transaction will be) considered independently of NRP and Roger Sharp, and Roger Sharp did not unduly influence GEO's decision to enter into the NRP Mandate (or undertake any Proposed Transaction) or vote on any resolution to approve the entry into the NRP Mandate (or any Proposed Transaction);
      - C. the decision to enter into the NRP Mandate will be made by GEO's Independent Directors;
      - D. the GEO Board considers that entry into the NRP Mandate is in the best interests of GEO and all of GEO's shareholders who are not NRP or Associated Persons of NRP;
      - E. the GEO Board, independently of Roger Sharp, considers that the terms of, and Fees payable under, the NRP Mandate reflect market terms and rates for financial advisory services for an engagement of this nature; and
    - ii. in relation to the waiver of Rule 5.2.1(b):
      - A. the reason for granting the waiver of Rule 5.2.1(a) at section 6(b)(i)(A) above also applies in substance to the waiver of Rule 5.2.1(b);
      - B. the terms of any Transaction that GEO's Board decides to undertake will be negotiated on an arm's length basis and Roger Sharp will not vote on any decision to enter into the Transaction. Accordingly, Roger Sharp will not be in a position to exert undue influence over GEO's Board's decision to undertake the relevant Transaction;
      - C. the GEO Board, independently of Roger Sharp, considers the need to undertake the Transaction (regardless of the form of Transaction) in a form proposed under the NRP Mandate to be in the best interests of GEO and GEO's shareholders;

- D. the decision to undertake any Transaction will be made by GEO's Independent Directors; and
  - E. while NRP will benefit from any Transaction undertaken by GEO (regardless of whether such Transaction is a Material Transaction) in its capacity as financial advisor to GEO through earning the Fees, Roger Sharp will not be involved in the decision as to what Transaction GEO ultimately decides to undertake. Accordingly, NRP will not be in a position to unduly influence GEO's Board's decision to pursue the Transaction as its only influence will be in its professional capacity as financial advisor to the Transaction under the terms of the NRP Mandate.
- c. The certifications proposed to be given by the Independent Directors of GEO at section 5 provide NZ RegCo comfort that the NRP Mandate has been negotiated on an arm's length basis and that Roger Sharp has not exercised any undue influence over the GEO Board in its decisions relating to the NRP Mandate.
  - d. GEO is currently undertaking a range of cost cutting activities in order to achieve a breakeven point, which will in turn reduce their short-term growth. Given GEO's financial outlook and conclusions from its recent strategic review, the Board has decided to launch a formal process to assess buyer interest in GEO. Accordingly, GEO has submitted, and NZ RegCo has no reason not to accept, that GEO's financial position is such that the waivers are in the best interests of shareholders.
  - e. GEO took soundings from other market participants and those soundings indicated fees significantly in excess of those provided by NRP. On this basis, GEO has submitted, and NZ RegCo has no reason not to accept, that the fees provided for under the NRP Mandate are below usual costs for engaging investment banking services, and that entry into the NRP Mandate is therefore in the best interests of GEO shareholders.
  - f. There is precedent for this decision.

## Appendix One

1. GEO Limited (**GEO**) is an Issuer with Equity Securities Quoted on the NZX Main Board.
2. GEO is aware of consolidation occurring in the global home services software market and has undertaken a review to assess its strategic options, including the exploration of value accretive transactions such as a sale or restructure (the **Transaction**). If the Transaction is undertaken, GEO will need to consider shareholder approval requirements under the NZX Listing Rules and Companies Act.
3. GEO has asked North Ridge Partners (**NRP**), an investment bank who provide financial advisory services in the ordinary course of their business, to propose terms under which NRP would act as GEO's financial advisor in relation to the Transaction.
4. NRP is a Related Party of GEO due to a Director of GEO, Roger Sharp, also being a director and beneficial owner of NRP and who, between his interests in NRP and Wentworth Financial Pty Ltd holds a Relevant Interest in 10% or more of GEO's Equity Securities.
5. NRP has provided GEO with an engagement letter setting out the terms under which it is willing and prepared to act as GEO's financial advisor for the Transaction (the **NRP Mandate**). Under the terms of the NRP Mandate, GEO will pay fees to NRP (the **Fees**), including a fixed monthly retainer fee as well as a success fee dependant on the form of Transaction ultimately undertaken by GEO, and the value of the Transaction.
6. Roger Sharp was, deliberately, not involved in the decision to engage NRP or the negotiations of the NRP Mandate, and has not been involved in any GEO Board discussions or decisions relating to the NRP Mandate.

### Related Party Waiver

7. Listing Rule 5.2.1(a) requires an Issuer to obtain shareholder approval to a Material Transaction (or have such Material Transaction be conditional on such approval) if a Related Party is, or is likely to become, a direct party to the Material Transaction.
8. Depending on the form of Transaction that GEO's Board decides to undertake and when such Transaction occurs, the payment of the Fees to NRP may constitute a Material Transaction on account of the Fees payable to NRP in a financial year under the NRP Mandate exceeding an amount equal to 1% of GEO's Average Market Capitalisation.
9. GEO's Average Market Capitalisation as at the date of this decision is approximately \$4.4m. 1% of this amount is \$44,000.
10. The Fees payable to NRP under the NRP Mandate include:
  - a. a fixed monthly retainer fee;
  - b. in the event of the full or partial sale of GEO, a success fee determined as a fixed percentage of the value of the Transaction; and
  - c. a provision that entitles NRP to payment of an amount equal to the fee payable in respect of a type of transaction provided for under the NRP Mandate if such a form of transaction is undertaken by GEO within 12 months after the termination of the NRP Mandate.
11. The NRP Mandate provides for several forms of Transaction, each of which entitles NRP to success fees, which are not mutually exclusive.

12. If GEO's Board were to decide to undertake a Transaction then GEO will likely pay NRP a gross amount in Fees in a financial year exceeding 1% of GEO's Average Market Capital.
13. Accordingly, there is a possibility that through entering into the NRP Mandate and paying NRP the Fees GEO may enter into a Material Transaction which, absent a waiver, would require approval by GEO's shareholders.
14. GEO is unlikely to be able to rely on the exception to the definition of "Material Transaction" set out at Listing Rule 5.2.2(i)(ii) as the Fees payable to NRP under the NRP Mandate in at least one financial year (likely either FY24 and/or FY25) will likely constitute a gross cost to GEO in excess of \$250,000.

#### **Material Transaction Waiver**

15. Listing Rule 5.2.1(b) requires an Issuer to obtain shareholder approval to a Material Transaction (or have such Material Transaction be conditional on such approval) if a Related Party is, or is likely to become, a direct Party to the Material Transaction or a beneficiary of a guarantee or other transaction which is a Material Transaction.
16. As set out at paragraph 9 of Appendix One, GEO's Average Market Capitalisation as at the date of this decision is approximately \$4.4m.
17. Depending on the form of Transaction that GEO's Board decides to undertake, such Transaction may constitute one or more Material Transactions as a result of GEO selling or otherwise disposing of assets having an Aggregate Net Value above 10% of GEO's Average Market Capitalisation.
18. 10% of GEO's Average Market Capitalisation is \$440,000.
19. Accordingly, there is a possibility that through earning the Fees under the NRP Mandate, NRP may become a beneficiary of a transaction which is a Material Transaction that, absent a waiver, would require approval by GEO's shareholders.

## Appendix Two

### Rule 5.2 Transactions with Related Parties

5.2.1 An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

(a) a direct party to the Material Transaction; or

(b) a beneficiary of a guarantee or other transaction which is a Material Transaction,

unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

**"Material Transaction"** means a transaction, or a related series of transactions, whereby an Issuer:

...

(c) borrows, lends, pays or receives money, or incurs an obligation of an amount above 10% of the Average Market Capitalisation of the Issuer (except in the case of an issue of Debt Securities, in which case only the nominal amount of Debt Securities being issued to any Related Party or to any Employees of the Issuer are to be taken into account);

**"Related Party"** means a person who, at the time of a Material Transaction, or at any time within the previous six months, was:

...

(b) the holder of a Relevant Interest in 10% or more of a Class of Equity Securities of the Issuer carrying Votes.