

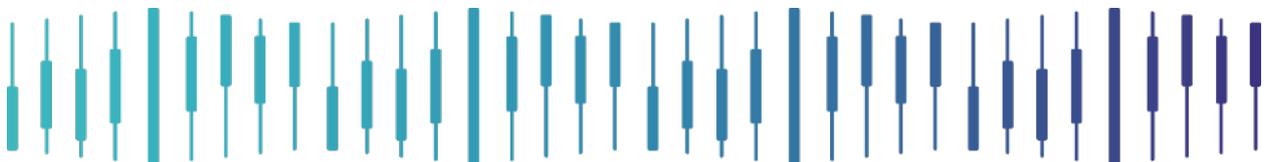
NZ RegCo

NZ'S LISTED
MARKET REGULATOR

16 October 2023

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. Subject to the conditions set out in paragraph 5 below, and 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.
5. The waiver in paragraph 4 above is provided on the condition that current Independent Directors of ATM who were directors at the time of the negotiation and entry into of Mr Bortolussi's employment agreement certify to NZ RegCo that the terms of the employment agreement, including with respect to the grant of the CEO Performance Rights, were set on an arm's length commercial basis.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZ RegCo has considered that:
 - (a) but for the seeking of shareholder approval on an advisory basis and under the ASX Rules for Mr Bortolussi acquiring performance rights under ATM's LTI plan, ATM would have been able to issue these performance rights without shareholder approval and appraisal report under Rule 4.6.1;
 - (b) 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;

- (c) 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;
- (d) 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;
- (e) 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;
- (f) the current Independent Directors of ATM who were directors at the time of the negotiation and entry into of Mr Bortolussi's employment agreement have certified or will certify to NZ RegCo that the terms of the employment agreement, including with respect to the grant of the CEO Performance Rights, were set on an arm's length commercial basis;
- (g) the need for an Appraisal Report only arises because Mr Bortolussi is a director of ATM, 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;
- (h) ATM's shareholders will be asked to consider the CEO Rights Resolution with the knowledge of the waiver sought having been granted; and
- (i) there is precedent for the decision.

Confidentiality

7. ATM has requested that this decision be kept confidential until ATM issues its 2023 notice of annual meeting.
8. 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. 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. To date, the performance rights granted to Mr Bortolussi have been granted in reliance on the exceptions described above and ATM shares that have been acquired on-market have been transferred to Mr Bortolussi (rather than new shares issued) following vesting of performance rights.
6. At the 2023 annual meeting, ATM is 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**). It is proposed that 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. At the same time as seeking approval on an advisory basis, ATM proposes to 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).
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, a director of ATM, Rule 7.8.5(b) applies to the 2023 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.