NEW ZEALAND MARKETS DISCIPLINARY TRIBUNAL

21 March 2024

PUBLIC CENSURE OF GENEVA FINANCE LIMITED BY THE NZ MARKETS DISCIPLINARY TRIBUNAL FOR BREACHES OF NZX LISTING RULES (*RULES*) 2.1.1(c), 2.13.2(b), 2.13.2(c), 3.8.1(a), 3.8.1(b) AND 3.8.1(e)

1. The NZ Markets Disciplinary Tribunal (*the Tribunal*) has approved a settlement agreement between NZX Limited (acting through NZ RegCo) and Geneva Finance Limited (*GFL*) dated 5 March 2024 (*Settlement Agreement*).

Background

2. GFL's Board must have at least two Independent Directors (Rule 2.1.1(c)) and its Audit Committee must comprise at least three members and have a majority of Independent Directors (Rules 2.13.1(b) and 2.13.2(c)).

3. Between 31 July 2023 and 7 September 2023, GFL had only one Independent Director and its Audit Committee did not have three members or a majority of Independent Directors following the resignation of Independent Director Mr Nair and until the appointment of Independent Director Mr Smale (*the Governance breaches*). GFL self-reported the Governance breaches to NZ RegCo on 5 September 2023.

4. GFL's annual reports must disclose the extent to which it has followed the recommendations in the NZX Corporate Governance Code (*the Code*) during the relevant financial year (Rule 3.8.1(a)). Where GFL has not followed a Code recommendation, Rule 3.8.1(b) requires GFL to explain its non-compliance. GFL's annual reports must also identify which of its Directors are Independent Directors and the factors relevant to that determination (Rule 3.8.1(e)).

5. NZ RegCo advised that during its investigation into the Governance breaches, it identified compliance issues with GFL's annual reports. GFL's annual reports for the financial years ended 31 March 2019 to 31 March 2023 did not disclose the extent to which GFL had complied or not complied with the Code recommendations in breach of Rules 3.8.1(a) and 3.8.1(b) and did not sufficiently state the factors relevant to its determination of a Director's 'independence', referring only to 'conflicts of interest' in breach of Rule 3.8.1(e). GFL's 2019 annual report also failed to identify its Independent Directors (together *the Annual Report breaches*).

Settlement Agreement

6. Under the terms of the Settlement Agreement, GFL admits breaching Rules 2.1.1(c), 2.13.2(b), 2.13.2(c), 3.8.1(a), 3.8.1(b) and 3.8.1(e) and agrees to pay a financial penalty of $80,000, pay the costs of NZX and the Tribunal, and be publicly censured.

7. To approve the Settlement Agreement, the Tribunal must be satisfied that the penalties agreed by the parties are appropriate in the circumstances of this matter.

Tribunal assessment of penalty

8. The Tribunal Procedures provide guidance to the Tribunal on assessing the appropriate financial penalty for a breach of the Rules[1].

Step 1: Factors relevant to the breach

9. The Tribunal considered that the following penalty band factors were relevant to GFL's breaches:

Penalty Band 1 factors

a. NZ RegCo identified no loss arising from GFL's breaches.

b. The Governance breaches are unlikely to have had a financial benefit for GFL. While Director fees were not incurred, this amount was minimal and likely outweighed by the time spent identifying a replacement Independent Director.

c. The Governance breaches likely had no, or minimal, impact on investors and the market. GFL's Board Chair was an Independent Director and Audit Committee member, and there was no evidence that the matters discussed, or decisions made, at the Board and Audit Committee meetings held without the requisite number of Independent Directors were influenced by the Governance breaches.

Penalty Band 2 factors

d. The Annual Report breaches did have a financial benefit for GFL. GFL did not incur the costs of assessing its compliance with the Code recommendations and disclosing that information in its annual reports over five reporting periods.

e. The Annual Report breaches had a moderate impact on investors and the market given GFL has made no disclosure on its compliance with the Code recommendations, nor has it adequately disclosed the factors it considered when determining which Directors were Independent Directors, since it migrated to the Main Board in 2019.

f. The Governance breaches continued for a moderate period - 5½ weeks.

Penalty Band 3 factors

g. GFL's breaches were serious compliance breaches given the importance of a properly constituted Board and Audit Committee, and GFL's complete omission to report against the Code recommendations;

h. GFL's breaches had the potential to cause a significant impact on investors and the market. The potential harm of the Governance breaches was that GFL's Board and Audit Committee lacked sufficient independent perspective to decision-making and that GFL's Audit Committee was less robust and not sufficiently separate from GFL's management. GFL's failure to report against the Code recommendations had the potential to harm investors who were not adequately informed of GFL's corporate governance practices and damage the market's confidence in the effectiveness of the Codes 'comply or explain' approach.

[1] *NZMDT 1/2023 NZX Limited v Hallenstein Glasson Holdings Limited* outlines the Tribunal's approach to the Procedures.

i. The Governance breaches continued once discovered. Although GFL engaged with potential candidates before the breach occurred, the breach continued for 5½ weeks. The Tribunal is cognisant of the difficulty some smaller Issuers have in attracting suitably qualified Independent Directors under urgency, making succession planning important.

j. The Annual Report breaches continued for an extended period - 2019 to 2023.

10. When weighing up all the applicable factors, the Tribunal considered that GFL's breaches fell within Penalty Band 2 and that the starting point penalty should fall in the mid-range of Penalty Band 2. The Tribunal considered that a starting point penalty of $110,000 was appropriate ($60,000 for the Annual Report breaches and $50,000 for the Governance breaches).

Step 2: Factors relevant to GFL

11. To determine the final level of penalty, the Tribunal must adjust the starting point penalty to reflect the aggravating and mitigating factors relevant to GFL.

Aggravating factors

12. The Tribunal considered that the Annual Report breaches were negligent given GFL's failure to report against the Code recommendations since its migration to the Main Board in 2019. GFL had insufficient compliance procedures and controls in place, having continued to use the same reporting template it had used for the NZAX market over the 2019 to 2023 financial years, despite NZ RegCo previously drawing GFL's attention to its disclosure obligations on several occasions.

Mitigating factors

13. GFL self-reported the Governance breaches, admitted the Annual Report breaches at the earliest opportunity, co-operated fully with NZ RegCo's investigation, has committed to improving its compliance practices and has reached a settlement with NZ RegCo.

14. When weighing up the aggravating and mitigating factors, the Tribunal considered that a reduction in the starting point penalty was warranted and that a final penalty of $80,000 was appropriate ($45,000 for the Annual Report breaches and $35,000 for the Governance breaches).

Approval

15. The Settlement Agreement is approved by the Tribunal under Tribunal Rule 8, and as such, the Settlement Agreement is the determination of the Tribunal.

Censure

16. The Tribunal hereby censures GFL for breaches of Rules 2.1.1(c), 2.13.2(b), 2.13.2(c), 3.8.1(a), 3.8.1(b) and 3.8.1(e).

The Tribunal

17. The Tribunal is a disciplinary body which is independent of NZX and its subsidiaries. The Financial Markets Authority approves its members. Under the Tribunal Rules, the Tribunal determines and imposes penalties for referrals made to it by NZX in relation to the conduct of parties regulated by the NZX Market Rules.

ENDS