NZX Capital Raising Settings and Listing Options

Targeted Review

Consultation Paper

27 July 2022

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This Consultation Paper has been prepared by NZX to seek comment on the proposals contained in the paper, with a view to ensuring that the proposals will enable NZX to operate its markets on a fair, orderly and transparent basis. The proposals set out in this paper do not reflect NZX's concluded views of the matters raised. Capitalised terms which are not defined in this Consultation Paper have the same meanings given to them in the NZX Listing Rules.

Introduction

New Zealand's listed market has been through a period of heightened capital raising in response to Covid, consistent with the experience in other markets. NZ RegCo introduced temporary relief from some NZX Listing Rule (**Rule**) requirements during the initial Covid period to support listed companies.

Information and insights from recent transaction activity, alongside trends in international markets, provides a useful backdrop to consider how the current rule settings are operating in practice and to ensure that NZX's Rule settings provide adequate shareholder protections for the structures currently being used in the market. More broadly, updated Rules have been in place since 2018, and NZX had previously signaled its intention to review the settings for capital raising. We note at that time the placement capacity was reduced to 15% to enhance shareholder protections.

In this context, now is an appropriate time to conduct a targeted review of NZX's equity capital raising settings. The overall aim of the review is to continue to promote market development and integrity by considering Rule enhancements which balance the needs of all participants in NZX's markets.

Objectives of the review

NZX recognises the purposes in the Financial Markets Conduct Act 2013 (**FMCA**) to promote and facilitate the development of fair, efficient and transparent markets in New Zealand, and to promote innovation and flexibility in the financial markets.

To promote these purposes, NZX is undertaking a targeted review of the capital raising settings in its Rules to meet the following objectives:

- Ensure that NZX's Rules facilitate current transaction structures with necessary shareholder protections; and
- Ensure that NZX's Rule settings appropriately reflect international developments in quoted product design and primary and secondary capital raisings in the context of New Zealand's capital markets.

Capital Markets 2029 highlighted an ambition for New Zealand companies to access public markets to fund growth and to transfer ownership of assets with greater direct and indirect participation of New Zealanders.[1] There continue to be international developments in relation to accessing public markets and NZX is seeking preliminary feedback on whether to enable additional listing pathways to continue to develop the listed market in New Zealand.

[1] Growing New Zealand's Capital Markets 2029, page 7 see here

Consultation Process

NZX wishes to consult on the proposed amendments to the Rules that accompany this Consultation Paper, and seeks feedback on the discussion points identified in the Consultation Paper. NZX also seeks feedback on amendments to its corporate action notice, an exposure draft of which is linked within this Consultation Paper. The consultation process of our targeted review is outlined below:

- Publish consultation paper — 27 July 2022
- Feedback on first round of review due — 2 September 2022
- Consider feedback and refine proposed outcomes — September 2022
- Seek formal approval of amendments from FMA — Q4 2022
- Implement changes — Q4 2022 (targeted)

We invite interested parties to provide their views on the proposed amendments by emailing a written submission to policy@nzx.com. Alternatively, if you would prefer to provide a verbal submission, please email NZX Policy to arrange a time to speak with us. The closing date for submissions is **Friday 2 September 2022**.

NZX may publish the submissions it receives, so please clearly indicate in your submission if you do not wish for your submission to be published, or if part of your submission contains confidential information.

If you have any queries in relation to the review, please contact:

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Part A: NZX Capital Raising Settings

1. Overview of capital raising settings within NZX's Rules

NZX's Rules outline minimum requirements to ensure there is a baseline of shareholder protections for publicly listed companies in New Zealand. The Rules are supported by recommendations seeking to promote good corporate governance contained in NZX's Corporate Governance Code (**Code**), recognising that boards are in place to protect the interests of shareholders and to act in the best interests of the company. Changes to capital are a key area of focus and the listing regime seeks to complement other legal requirements, such as the Companies Act 1993.

A range of structures can be used by listed companies to raise capital. A general description of the most common structures is provided in the next section of this paper. NZX's Rules do not seek to prescribe specific structures because this will be a matter for boards to determine. Instead, the listing regime places general restrictions and obligations on companies to protect the interests of shareholders when undertaking capital change transactions.

There is a general principle that, as owners of the company, existing shareholders should be offered the first opportunity to participate in capital raisings on a pro-rata basis (i.e., to participate in proportion to their existing holdings), unless they have approved otherwise, or the issue is otherwise permitted under NZX's Rules. This principle is built into most recognised listing regimes and is a feature of NZX's Rules as explained below. Currently, NZX's Rules also permit pro rata renounceable offers without shareholder approval. This recognises the existing property right because shareholders who choose not to participate in an offer can still potentially realise some value from the transaction.

Non-pro rata structures by their nature have the potential to dilute existing shareholder interests so there should be limits on the extent to which this can occur without shareholder approval.

Broadly speaking, these general principles are reflected in NZX's Rules as follows[2]:

- Companies can generally undertake capital raising transactions on any terms with shareholder approval.
- Companies can undertake pro rata renounceable offers, unlimited as to size and price, without shareholder approval.
- Companies can issue up to 15% of their existing shares on a non-pro rata basis within a 12-month period (i.e. placement capacity), smaller issues of shares under employee share schemes (up to 3% within a 12-month period) and share purchase plan (up to 5% of a class of equity security, subject to a $15,000 offer limit per holder in any 12 month period).
- The Code recommends on a "comply or explain" basis that companies should conduct capital raisings on a pro rata basis. Issuers must explain 'why' in their annual reports if they have elected not to do so.

NZX's Rules do not place restrictions on the price at which securities can be issued, which will be a commercial matter for boards. However, non-pro rata issues at a more than 15% discount require directors to certify the price is fair and reasonable to the relevant issuer and to those not participating in the offer.

[2] See section 4 of NZX's Rules and recommendation 8.4 of the Code here

NZX's Rules also permit the use of accelerated structures so that the institutional component of pro rata capital raisings can be conducted on shorter timetables.

This paper discusses trends in relation to recent capital raising structures and seeks feedback on potential amendments to refine the current settings.

2. Explanation of the different offer structures

Before we discuss recent transaction activity and market feedback, we have outlined below some basic information of the most common offer structures:

Non-pro rata structures

- **Placement** – where shares are issued to either new or existing shareholders at an agreed price.
- **Share purchase plan (SPP)** – an offer to existing holders to subscribe for shares up to a monetary limit at an agreed price.

Pro rata structures

- **Traditional rights issue** – where renounceable rights are issued to existing shareholders in proportion to their existing holdings, allowing holders to exercise such rights to be issued new shares at an almost always discounted price. The rights are renounceable. An issuer may apply for the rights to be quoted and tradeable on-market or there may be a shortfall bookbuild, or a combination of both, allowing existing holders to realise some value if they choose not to participate in the offer.
- **Accelerated renounceable entitlement offer (AREO)** – an AREO is similar to a traditional rights issue but will usually provide for the offer of shares to institutional investors to be accelerated ahead of retail investors. In addition to being pro rata, the benefit of this structure is that existing shareholders who choose not to take up their entitlements have the potential to sell those entitlements through a renunciation feature or potentially receive value through a bookbuild process if a premium is achieved. This feature recognizes the existing property right of these shareholders and may be particularly important if the offer is being conducted at a deep discount. A shortened timetable may reduce the period at which an underwriter is "on risk" and therefore increase the ability for the offer to be underwritten and reduce the costs of underwriting. A shorter period for a component of the offer may also reduce the offer discount.
- **Accelerated non-renounceable entitlement offer (ANREO)** – the key difference between an ANREO and AREO is that the offer is not renounceable. Existing shareholders will not have the potential to realise value if they choose not to take up their entitlements because the entitlements are not renounceable. The rights aren't quoted and traded and there is generally no shortfall bookbuild, with any shortfall being allocated to underwriters and sub-underwriters. If a shortfall bookbuild is included, the proceeds of any premium obtained will go to the company instead of existing non-participating shareholders.

The above is not intended to be an exhaustive explanation. Offer structures can be used in combination e.g. a placement and SPP. The value of the relative features of each structure will also depend on the specific offer terms and other structuring details, as discussed further below.

Further explanation and commentary in relation to offer structures can be found in an analysis of equity raising structures from 1 January 2020 until 31 March 2022 published by Chapman Tripp.[3]

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[3] https://chapmantripp.com/media/snzianh0/chapman-tripp-comments-on-recent-equity-raising-structures.pdf

3. Recent transaction trends

We have reviewed recent transaction data as part of designing the proposals on which we are currently consulting, a summary of that review is set out below.

Transaction data and trends

As noted above, New Zealand's listed market has been through a period of heightened capital raising activity since the beginning of 2020 as companies dealt with the initial impacts of Covid. NZX listed companies raised $17.6 billion of capital in 2020 and $19.8 billion was listed and raised in 2021.[4]

Some companies needed to urgently recapitalise via accelerated structures, leading to some large capital raisings at deep discounts. NZ RegCo introduced some temporary rule relief to support companies through this process, including to increase companies' overall placement capacity from 15% to 25%, to permit ANREOs (subject to limits, including a 2:1 issuance limit) as an accepted form of pro rata structure and to increase the limits for share purchase plans from 5% to 30% and $15,000 to $50,000.[5]

The analysis of equity raising structures from 1 January 2020 until 31 March 2022 published by Chapman Tripp noted above provides data on recent capital raising structures. A quick summary of some of this information is outlined in the following table and used in the discussion which follows.

Structure	#	Total raised	Discount ranges (to last closing price)	Comment
Placement/SPP	27	$5.3 b	0.9% premium – 32% discount	Broad range of transaction sizes Discounts lower at top end
Placement	2	$44 m	14% premium – 7.9% discount	Less frequent standalone structure Example of a significant premium.
Placement/ANREO	7	$604 m	11.7% discount – 63.6% discount	Transaction sizes range $19-207m Discounts higher at top end
Placement/Rights issue	2	$338 m	6.9% discount – 12.2% discount	Potential for different discount within offers Transaction sizes range $8.3–330m
AREO	2	$84 m	13.6% discount – 16.4% discount	Less frequent Transaction sizes lower - $40-44m
Rights issue	6	$1.36 b	5% discount - 61.5% discount	Broad range of transaction sizes $4m to 1.2b Discounts higher at top end

[4] NZX 2022 and 2021 Annual Reports, pages 8 here and here

[5] See NZX and NZ RegCo announcements here , here and here

Australian experience

The strong connection between the New Zealand and Australian capital markets is reflected in the comparable rules between NZX and ASX. ASX also followed NZX's approach of providing rule relief for listed companies in response to Covid.

However, an important difference is that NZX's Rules do not currently provide for ANREOs as a permitted pro rata offer structure, as is the case on ASX with an issue ratio limit of 1:1 as an anti-dilution protection. ANREOs therefore require shareholder approval or a waiver before they can proceed on NZX.

These structures are by far the most common form of secondary raising structure in Australia with at least 67 ANREOs conducted by issuers on ASX since the beginning of 2021. Data highlights that these transactions are often completed at a tighter discount (low single % discount) and lower dilution ratio than other forms of pro rata offers in New Zealand, indicating they are also being used for growth opportunities.

Because ANREOs were only permitted without shareholder approval in New Zealand during Covid, the data for New Zealand is skewed towards transactions where companies were recapitalising rather than pursuing growth opportunities. As a result, ANREO discounts and dilution levels observed during that period in New Zealand were generally much higher than recent data for Australian ANREOs.

It appears that ANREO structures are also used in Singapore, Hong Kong, the UK and US. This raises a key question as to whether NZX's Rules should also permit this form of offer structure, noting that if this is permitted it is also likely to become a common structure as is the case on ASX.

More broadly, ASX is currently consulting on targeted amendments to its own capital raising rules which consider similar issues to the current review, especially in relation to disclosure. Some of these specific proposals are discussed in the following sections of this paper.

4. Initial Market Feedback and NZX Discussion

In addition to considering recent transaction activity, we have sought preliminary feedback in relation to the design of the proposals set out in this paper, from a range of market participants to assess how the current settings are working, including:

- Institutional and retail investors
- Board directors
- Investment banks and brokers (including retail platforms)
- Legal advisers
- Regulators

Some general themes have emerged from these initial inputs to the review. A summary of this feedback and NZX's consideration of that feedback in designing the proposals is set out below.

General feedback

Stakeholders consider and NZX agrees that at the most basic level, companies should be thinking about their capital structure and capital expenditure requirements as part of usual budgeting and planning cycles. Investors would expect to have insight on these matters as part of a company's investor relations programme. This means companies should not generally be surprising investors with unexpected capital raisings or unnecessarily delaying capital raisings to a time when options for the company are more limited. These factors may be a sign of poor governance.

When a capital raising is necessary, it is not as simple as suggesting that a single offer structure is better than others, because a company will need to consider a range of factors in determining the best structure and offer terms for the circumstances. These factors may include:

- Current company performance
- The reasons for the capital raise and required timing for the funds
- The size of the raise relative to the company's market capitalisation
- Market and macro-economic conditions
- Composition of the existing share register (i.e. the proportion of institutional and retail, NZ and offshore, and custodial holdings) and expected level of support from current shareholders
- Availability and cost of underwriting.

Boards are the decision makers regarding the structure to use and have an obligation to act in the best interests of the company. The level of experience in capital raising on boards will vary and preliminary feedback provided to NZX indicates that there often needs to be a heavy reliance on external advisers to support decision making. This is not unexpected given the technical nature of capital raising and the likelihood that it is an infrequent event for many companies. The incentives for external advisers may not always be aligned to delivering outcomes in the best interests of existing shareholders and this is an important factor for boards to consider in the selection of external advisers and during a capital raising process. We are seeking feedback below on whether further resources would assist boards.

By far the most common form of capital raising structure in New Zealand over the period from 1 January 2020 – 31 March 2022 has been a placement and share purchase plan with 27 out of the total 46 transactions. These are not inherently pro rata structures, but allocation and scaling policies can facilitate the participation of existing shareholders to seek to deliver pro rata outcomes. The transaction data indicates that these are completed within a broad range of discounts, although they tend not to be as heavily discounted at the extremes as other structures.

In general, investors have a reasonable expectation that boards should consider the interests of existing shareholders when raising capital. Investors acknowledge that non-pro rata structures may be preferable in some cases, or that an ANREO structure may be appropriate, but these are less preferred, and shareholders want to understand why the selected structure is the best option in the circumstances.

Under accelerated structures, and placements and SPPs, the institutional component of an offer is usually completed earlier in the process, and these investors generally participate in pricing discussions in which retail investors are not included. It may also be practically easier for institutional investors to participate in offers due to existing relationships with advisers supporting transactions. Selection of advisers to support a deal is important, including to consider how to address retail distribution. We discuss below some proposed measures to support retail participation in offers.

Sell-side advisers and issuers prefer flexibility in the structure employed but seem comfortable to seek to deliver pro rata outcomes through whatever structure is employed. Underwriting arrangements are important and are discussed below.

Rights issues

Investors seem to have a strong preference for renounceable rights issues i.e. an AREO or traditional rights issue. The pro rata nature of such offers mitigates the risk of dilution and the inclusion of a liquidity event for non-participating shareholders (such as rights trading and/or a shortfall bookbuild) allows investors the potential to realise some value if they elect not to take up their rights, which might be the case for a range of reasons. A renunciation feature coupled with a liquidity event may be particularly important if the offer is deeply discounted because there will be more risk of value transfer from non-participating shareholders to anyone taking up shortfall shares.

This assumes there is a liquidity event through rights trading or a shortfall bookbuild, otherwise there might be less value in a renounceable structure, or it may be less fair on retail investors who are unable to practically access liquidity in the same way as institutional investors. These factors highlight that the legal structuring and commercial terms are also critical and a heavily prescriptive and technical approach to the Rules is unsuitable. This also raises an important question of whether quoted rights or a shortfall bookbuild (i.e., a "liquidity event") should be required for a renounceable offer to ensure fairness.

There is also no guarantee that non-participating shareholders will realise value because a bookbuild may not achieve a premium. There may also be different outcomes under separate bookbuilds for an institutional and retail component as reflected by recent transaction data.

In theory the size of a discount will not matter for existing shareholders under a pro rata offer because the value of the company should be recognised by an efficient market over time and therefore the amount to be paid by a shareholder to retain its existing stake would be the same under any discount. However, in practice, most offers are not completed on a pro rata basis. Boards seek to strike a balance between minimising a discount, while at the same time providing an incentive for shareholders to participate and pricing the offer where it can be underwritten at reasonable cost, and where the offer can be resilient to market risk over the offer period.

There have been a reasonable number of traditional rights issues since the beginning of 2020 (9), with AREOs (4) being less common. These are both far less common than placements and SPPs. This is despite these structures generally being the stated preference of investors.

It has been suggested the 5-day notification period prior to a record date for a traditional rights issue may be unnecessary because there is no justification for allowing a period for new investors to trade into the entitlement and that the removal of this period may make this structure more attractive. However, there is an argument it may be helpful for retail investors to allow them to trade their underlying positions cum entitlement and we therefore seek feedback below on this point.

ANREOs were a popular structure during Covid, enabled by the NZ RegCo class relief noted above. A more deeply discounted non-renounceable offer has the potential to transfer value from existing to new shareholders (or underwriters). Arguably there will be a stronger incentive for existing shareholders to take up their rights under this structure given the risk of dilution (and potential value transfer) if they choose not to do so. It has also been suggested that this type of structure may make it easier to attract underwriting on suitable terms.

We seek feedback on these points, and whether ANREOs should be a permitted pro rata offer structure. We would propose if this were to be introduced that a maximum 1:1 offer limit is introduced to limit the overall dilution potential for non-participating shareholders. In addition, if this structure is to be used, boards should be carefully considering the reasons for adopting this structure and we propose to require disclosure of this reasoning as part of the offer process.

To ensure fairness between retail and institutional investors we propose to introduce a requirement for downside price protection for retail investors where there are different components or legs of an offer. This will generally apply in relation to accelerated offers or SPPs that accompany a placement, i.e. the price paid by retail investors cannot be higher than the price paid by institutions.

We also seek feedback on whether to further enhance protections for existing shareholders in relation to any shortfall from a pro rata offer. ASX is currently consulting on a proposal to introduce a requirement that the shortfall allocation policy must provide that in the first instance the shortfall will be offered to all holders who participated in the pro rata issue and indicated that they wished to apply for more than their entitlement. We seek feedback on whether to introduce a similar requirement.

Placements

Despite the preferences of existing shareholders for pro rata structures, a placement and SPP has been the most common recent capital raising structure on NZX's markets. The typical reasons advanced are that these structures:

- Can be completed faster and with more certainty of demand
- Are priced at a tighter discount
- Enable an opportunity to bring new shareholders onto the register.

We welcome further feedback on whether these are all valid reasons, especially the suggestion that placements can be conducted faster than other offers given the prevalence of accelerated pro rata offer structures. Investors would also argue that new shareholders can always acquire shares in a listed company via the secondary market. However, the transaction data reinforces the point that a placement may be considered by a board a better overall outcome for all shareholders in some circumstances. For example, if it is conducted at a premium to the prevailing share price, as was the case in at least one recent example.

We also understand that retail platforms are generally able to ensure access to placements on behalf of their investors, although the quality of participation may vary. Additional transparency of allocation and scaling policies may assist to support equal participation and promote pro rata outcomes.

Share purchase plans

Although share purchase plans (SPPs) are not pro rata structures, they are increasingly used to support retail participation in offers and can facilitate the delivery of pro rata outcomes. We see this as a positive trend because initial feedback indicates that institutional shareholders can generally ensure they receive pro rata allocations through all offer structures. Companies are currently permitted 5% capacity for SPPs subject to an individual offer limit of $15,000 in any 12-month period. However, market practice has developed so that companies use their placement capacity to offer up to $50,000 per holder.

NZX's current rules include a requirement that offer documents contain a term relating to scaling of over subscriptions in accordance with existing pro rata holdings. We are seeking feedback on whether to introduce a clearer obligation for pro rata scaling policies and whether the scaling of over subscriptions should only be permitted by reference to holdings on the record date of the offer without allowing scaling to be by reference to holdings at the closing date of the offer as currently permitted under the Rules. The rationale for permitting scaling in accordance with holdings at the closing date of an offer is not clear.

There seems to be general support for an increase in SPP thresholds to support retail participation in offers. We propose to increase the monetary limit to $50,000 per holder, provided the issuer scales applications in accordance with existing pro rata holdings, and to increase the percentage limit on the proportion of shares that can be issued under an SPP from 5% to 10% to support this increased holder limit. Coupled with the enhanced disclosure requirements discussed below, these measures would support current market practice and seek to optimise pro rata outcomes for retail holders.

A placement together with an SPP is currently the most common structure used to raise capital in New Zealand. As noted above, to ensure fairness between retail and institutional investors we propose to introduce a requirement for downside price protection for retail investors where there are different components or legs of an offer. In respect of an SPP we propose that this be achieved by requiring that the price paid under the SPP cannot be higher than the price paid in any other offer announced together, or made in connection, with the SPP (such as a placement). We have observed that market practice is almost universally to include this pricing protection as a term of the SPP.

In addition, the majority of recent SPPs have provided further downside price protection by stipulating that the SPP price will be the lower of the price paid under the related placement and the 5 day VWAP for the issuer's shares prior to the close of the offer (sometimes with a discount applied to the 5 day VWAP). In volatile markets, this additional downside price protection is helpful to SPP participants, particularly where there is a long period of time between the placement and the SPP. Our focus is to ensure fairness between retail and institutional investors and therefore we do not propose to require further downside price protection by reference to prevailing market pricing, but this will remain open for issuers to adopt in their SPP terms should they wish.

Underwriting arrangements

Underwriting provides certainty to the company that the funds will be raised. The availability and cost of underwriting may depend on the offer structure being used (e.g. renounceable or otherwise, and whether value for the unexercised rights is remitted to shareholders or retained by the underwriter) , the size of the offer (both in absolute and relative terms) and level of discount. Underwriting is often passed on through further sub-underwriting arrangements, with sub-underwriting of pro rata offers sometimes used to introduce new investors.

The underwriter(s) is likely to have a significant role in the pricing of an offer given the potential to need to take up any shortfall shares and the impact this might have on the cost of underwriting. Arguably there might be a higher chance of an underwriter needing to take up shortfall shares on some transaction structures, such as an ANREO, especially if there is no shortfall bookbuild process.

Under accelerated structures the institutional component will often be completed earlier in the timetable so a greater period of underwriting risk will generally be borne in relation to the retail component of the offer. The mix of the register is therefore important. The extent of the underwriting and the period the underwriters remain "on risk" will impact the costs of underwriting.

The potential for the underwriter or sub-underwriters to end up holding stock in the issuer can have a significant impact on the aftermarket depending on the long-term intentions of these parties. The terms and pricing of such arrangements should be carefully considered by issuers. We seek feedback on whether to align with ASX for the disclosure requirements within corporate action notices in relation to underwriting arrangements.

Disclosure

Preliminary feedback to this review and to the separate ongoing Code review indicates that the market would prefer to see better and more timely disclosure in relation to board decisions for capital raisings. A key principle is the expectation that a capital raising considers the rights of existing shareholders, with a preference that they be conducted on a pro rata basis. We are proposing additional disclosure requirements to provide transparency on the decisions being made by boards and to explain how these decisions are in the best interests of the company and existing shareholders. We also think there should be additional basic disclosure in relation to underwriting arrangements given the materiality of these arrangements. We have outlined below some specific suggestions in these areas.

As noted in this paper, ASX is also currently consulting on some disclosure proposals which have been considered as part of this review.[6]

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[6] https://www2.asx.com.au/about/regulation/public-consultations

Guidance

Finally, preliminary feedback has supported the idea of additional guidance and information for companies to support decision making and we are seeking further feedback on this topic.

5. Proposed Amendments and Request for Feedback

Overview of approach to proposed amendments

Preliminary feedback indicates that the current Rule settings are generally working well. However, there is an opportunity to refine these settings to cater for all the offer structures currently being used and provide appropriate shareholder protections to enhance confidence in market participation.

There is a critical role for boards to play in determining the best structure to use for a capital raising and they are best placed to make these decisions. We consider that overly prescriptive rules will be less effective given the range of factors that need to be considered and to avoid technical approaches being taken to transaction structures to overcome rule requirements. We consider that boards should be able to consider the full range of options currently being used in the New Zealand and Australian markets, provided there are sufficient baseline shareholder protections. In this context, a key question arises in relation to the use of ANREOs as noted below.

We also think it is important to make some refinements to ensure fairness and to continue to support retail participation in capital raisings.

In general, it seems uncontroversial that companies should be considering the rights of existing shareholders and seeking to facilitate pro rata outcomes when conducting capital raisings. Therefore, we propose to enhance existing disclosure requirements so that there is more transparency on the decision making for capital raising structures and arrangements.

We also consider that additional information and guidance for issuers may support decision making.

Proposed specific amendments for feedback

The questions below are supported by proposed mark-ups to the current rules (Glossary and Section 4) which are available here. Feedback on the drafting is welcome in addition to the questions raised below.

1. Should we introduce downside price protection for retail shareholders where there are different components or legs of an offer? This will generally apply in relation to accelerated offers or placements and SPPs.

2. Noting that:

   - ASX permits the use of ANREOs provided dilution limits are in place;
   - Structures have recently been employed which mimic ANREOs, but have not required dilution limits; and that
   - We are proposing enhanced disclosure requirements:

   Should NZX's rules allow ANREOs as a permitted pro rata offer with a 1:1 offer limit?

3. Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?

4. Should we remove the requirement to make an announcement five days prior to the ex-date for traditional rights offers (i.e. for secondary capital raisings) to more closely align with accelerated offers? If so, should this also be permitted for SPPs in addition to the existing option for issuers to announce an SPP following the record date?

5. Should we introduce a requirement that the allocation policy for any shortfall from a pro rata offer must provide that in the first instance the shortfall will be offered to all holders who participated in the pro rata issue and indicated that they wished to apply for more than their entitlement? The offer of the shortfall must be made to them on a pro rata basis, based either on the size of their existing holdings on the record date for the pro rata issue or the number of the securities they have applied for in excess of their entitlement under the pro rata issue.

6. Should we increase the limit for participation in SPPs from the current $15,000 to $50,000 to align with market practice, providing that scaling policies are pro rata?

7. Should we increase the proportion of shares which can be issued outside of placement capacity under a SPP from the current 5% to 10% of the number of equity securities of the relevant class, subject to the issuer meeting enhanced disclosure requirements as noted in the disclosure section below and meeting the scaling requirement noted above?

8. Should we require downside price protection for SPP participants against any offer announced together with the SPP or otherwise made in connection with the SPP?

9. Should we only allow the scaling of over subscriptions for an SPP by reference to holdings on the record date of the offer without allowing scaling to be by reference to holdings at the closing date of the offer as currently permitted under the rules?

10. Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?

11. Should we require increased disclosure of underwriting (and sub-underwriting) arrangements through corporate action notices. We seek feedback on requiring disclosure of the following (where applicable):
    - Whether a joint lead manager (JLM) has been appointed
    - If so, the name(s) of the JLM(s)

- The fees payable to the JLM(s)
- Whether the issue will be underwritten
- If applicable, the name(s) of the underwriter
- The extent of the underwriting
- The fees to be paid to the underwriters
- Whether the issue will be sub-underwritten
- If applicable, the name(s) of the sub-underwriters
- The fees paid to the sub-underwriters
- The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated

An exposure draft of the proposed amendments to the corporate action notice is available here.

12. NZX seeks feedback on whether to require disclosure of the following (some of which are addressed in the proposed amendments to the Corporate Action notice available above):

    a) Pro rata issues – require disclosure of the shortfall allocation policy, required as part of the proposal under question 6 above, within the offer document for a pro rata issue.
    b) Scaling policies for SPPs, Rights issues and Accelerated Offers.
    c) Placements - to disclose:
        - details of the offer in a Corporate Action Notice, including the purpose of the placement, reason for conducting a placement rather than a pro rata rights issue or an SPP, whether Related Parties are eligible to participate in the placement and details of any escrowed shares issued in the placement.
        - within the documentation relating to the offer (and the Corporate Action Notice) whether existing shareholders will be entitled to participate in the offer, and if so, on what basis.
        - within 5 business days of the issue of shares under the placement, details of the approach the Issuer took in identifying investors to participate in the placement and how it determined their allocations (including the key objectives and criteria that the entity adopted in the allocation process, whether one of those objectives was a best effort to allocate on a pro rata basis to existing holders and any significant exceptions or deviations from those objectives and criteria).
    d) Reasons for selecting an ANREO structure.

13. We welcome any feedback on our proposal to introduce a mechanism for NZ RegCo to be able to request an allocation schedule as per the current proposals being consulted on by ASX noted above. This would not be for publication.

14. NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.

Part B: Listing Options

We are also seeking preliminary feedback on additional pathways to the listed market. *Capital Markets 2029* noted the established international trend since the mid-1990s of a reduction in the number of companies seeking to list and recommended NZX promote alternative pathways to the listed market, which NZX has sought to do with its Direct Listing and Foreign Exempt listing options. The report also recommended that all parties continue to encourage innovation in support of capital markets, which is consistent with the purposes under legislation.[7]

Consistent with these aims, there continue to be international developments in relation to accessing public markets and NZX is seeking preliminary feedback on whether to enable additional listing pathways to continue to develop the listed market in New Zealand.

1. Special Purpose Acquisition Companies (SPACs)

Special purpose acquisition companies (SPACs) are publicly held shell companies whose sole purpose is to acquire participation in one or more operating companies. The strategy consists of raising funds in the market through an initial public offering (IPO) and reserving them in a separate bank account, while the sponsor seeks out a company intending to go public within a pre-established period.

This funding structure first emerged in the United States in the 1990s and more recently has drawn the attention of several markets worldwide. In 2021, 613 SPACs were launched in the U.S., reaching a funding total of USD 162.5 billion.[8] SPACs represented over 59% of all new listings on Nasdaq in 2021.[9]

In markets where these listings have been popular there are regulatory frameworks with specific shareholder protections while offering legal certainty to sponsors. These typically include:

- Specific allocation of the funds raised – Under Nasdaq and NYSE requirements in the US, at least 90% of the funds raised in the SPAC's IPO must remain deposited in an escrow account allocated to (i) enable investment in the target company; (ii) pay the shareholders' proportional interest in a SPAC, in case they decide to exit their investment before the business combination; and (iii) refund investors in the event of a SPAC liquidation. It is important that the documents and contracts ring-fence the use of these funds.

- Approval of business combination – following the IPO, the target company search process is conducted and once chosen, the business combination must be formally approved. Some jurisdictions – notably the US – allow deliberation on this subject to be made by the board of directors, without approval in a shareholder meeting.

- Minimum clause – a key feature of most SPAC regimes is the option for investors to elect to seek reimbursement during the business combination process.

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[7] See section 4(d) of the Financial Markets Conduct Act 2013

[8] https://www.spacresearch.com/

[9] https://www.nasdaq.com/articles/a-record-pace-for-spacs-in-2021

- Investor compensation – if a SPAC's term expires without the business combination being carried out, its managers must (i) return the funds from the escrow account to the shareholders proportionally to their respective ownership; and (ii) delist the SPAC.

- Information disclosure - Seeking adequate disclosure for shareholders, it is recommended that SPAC and IPO documents show, besides their other disclosure duties: (i) risk factors specifically arising from the SPAC structure; (ii) remuneration and any benefits granted to sponsors and their stakeholders; (iii) funds' source that will support the SPAC maintenance before the business combination; (iv) the main characteristics of the escrow account; and (v) the data and conditions for exercising the warrants issued by the SPAC.

Some regimes have additional features (for example SGX), such as a prescribed timeframe for a target acquisition and specific governance requirements. The above list seeks to identify some of the most common features. SPAC listings are possible on NZX, and there is current guidance in relation to backdoor and reverse listings[10] which would be relevant in this context, but there is no specific regulatory framework or bespoke investor protections for these listings, so they would occur under the rules applying to all issuers of equity securities and any additional requirements imposed by NZ RegCo.

Feedback sought

1. NZX has not seen strong demand from promoters of SPAC listings. However, given the prevalence in other markets, we seek feedback on whether NZX should introduce specific investor protections to facilitate such listings if there is demand in future. What investor protections are needed for SPACs to be successful in the New Zealand market?

2. Dual class shares

Dual class shares are where a company issues two share classes, which may consist of Class A and Class B shares, for example. Typically, one class is offered to the public while the other is offered to the company founders, executives and family. The class offered to the general public often has limited or no voting rights, while the class available to founders and executives has more voting power and often provides for majority control of the company.

These structures appeal to high-growth companies, such as those in the technology and innovation sectors. It allows them to access capital markets for funding to support growth while maintaining voting control for their owner managers to execute long-term strategies for the company.

These structures can in theory be listed currently under NZX Listing Rule 1.10, subject to compliance with relevant Rules and other requirements as may be specifically imposed by NZ RegCo. However, there are no specific prescriptive requirements, and any application would need to be considered on a case-by-case basis.

Other markets have specific regimes in place in relation to the listing of issuers with dual class share structures – in particular, SGX and HKeX have recently amended their rules to permit such structures.[11]

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[10] See NZX's Guidance Note on Backdoor and Reverse Listings here

[11] SGX https://www.allenovery.com/en-gb/global/news-and-insights/publications/listing-of-companies-with-dual-class-shares-sgx-proposes-listing-rules-amendments HKeX https://www.hkex.com.hk/-/media/HKEX-Market/News/Research-Reports/HKEx-Research-Papers/2018/CCEO_DualClass_201811_e.pdf?la=en

The United Kingdom permits dual class share structures and is currently considering aspects of its regime as part of a broader review of its listing framework.[12] Dual class structured are also permitted on NYSE and Nasdaq. These regimes include restrictions on the exercise of superior voting rights, for example:

- An overall limit on the proportion (such as 10:1) of superior voting rights, and retaining some matters which require all shareholders to vote on a one vote per share basis.
- Clear exit and transfer provisions for superior voting rights.

Feedback sought

1. Given that many other international markets have established regimes in place for the listing of dual class share structures, should NZX consider the introduction of a specific regime for dual class issuers?
2. If so, what investor protections do you think will be necessary? In particular, how many years should a dual class structure remain in place before it is required to convert to a standard governance model (for example, after 5 or 10 years)?

[12] See pages 28/29 from the FCA's Discussion Paper dated May 2022 available here