Capital Raising and Listing Settings Review

Combined document of non-confiedntial submissions

14 June 2023

List of non-confidential submissions (in order)

ACC

Bell Gully

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Chapman Tripp

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Flacks & Wong

INFINZ (Institute of Financial Professionals New Zealand)

Jarden

Russell McVeagh

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NZSA (New Zealand Shareholders Association)

SIA (Securities Industry Association)

NZCGF (New Zealand Corporate Governance Forum)

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AFMA (Australian Financial Markets Association)

NZX Capital Raising Settings and Listing Options Consultation

Primary Response

The protection of the rights of shareholders, related to raising new capital, is a critical area of concern of fiduciaries with duties to end-shareholders of NZX-listed Issuers. We commend NZX for conducting the Review and thank NZX for the access / time provided to enable us to present our perspectives.

We support the motivations for reviewing the settings

- It is important that issuers have flexibility to raise capital in the most efficient way
- Stock exchanges are subject to competition – it is important that NZX is an attractive exchange for issuers to list (with specific reference to the ASX)
- The Review enables the addressing of concerns of some shareholders that shareholder rights are not sufficiently recognized by NZ market practice.

We support changes providing increased flexibility for issuers, with the condition that material changes to the Rules and Code are made to protect shareholders. With these material changes, we posit that the comply or explain structure would enable all interests to be well-served.

Specifically, this requires that

- Shareholder rights (or "fairness" as used throughout the Review) are clearly defined. We would have liked to have seen the Review address this directly
- Clear explanations are provided when rights have been over-ridden.

We set out 3 key postulates

P1. **that fairness means that the access to rights/ value of rights generated by capital raising structures, belong to the existing shareholders of the issuer. i.e. fairness mandates that all shareholders are assigned rights representing their %ge ownership of the issuer and the ability to sell or realise the value of those rights if they are not able to / or do not wish to, subscribe for new shares i.e. a pro-rata renounceable issue (PRRI) structure.**

P2. **the only justification for not adopting a PRRI is that there is a clear case that the advantages of the selected structure over a PRRI structure, benefits the issuer (i.e. all shareholders as a group).**

P3. **The obligation of the issuer to its shareholders does not end with providing the opportunity to subscribe for / the right to receive the proceeds from, the rights corresponding to their pro-rata entitlement. If offer structures include additional options to buy shares at a fixed price (e.g. some ANREO structures have placements at the issue price, for stock not taken up in the accelerated tranches), existing shareholders should have prior rights to subscribe (broadly in line with their holdings cum the announcement of the issue). If the structure does not recognise those rights, this decision, and the justification for it (i.e. the resulting benefits to the issuer) should be disclosed.**

P1& P2 appear to be consistent with the current NZX Code (Rec 8.4).

We recognize that other stakeholders may not share our definition of shareholder rights and the sufficient conditions for overriding them. That seems to us to be the crux of the "issue". We suggest NZX sets up a Governance Workshop to explore the issues in depth, with all stakeholders represented (including shareholders who do not have broker relationships).

Substantive Input to the Review

The Rules and Code should

- define and recognize shareholder rights and fairness as they pertain to capital raisings
- clearly state in which conditions non-PRRI structures are consistent with those rights
- set our clearly what disclosures are required to support the decisions to override shareholder rights (see Section 12)
- require NZX to monitor both the decisions boards make regarding capital raisings and the quality of supporting disclosures.

In our view, anything less specific, will leave the window open for issuers and their advisors to continue the current practice which appears to either rely on a different view of shareholder rights or does not fully recognize them.

The current regime is summarised in the Review as *a capital raising considers the rights of existing shareholders, with a preference that they be conducted on a pro rata basis and including the obligation to provide explanations required by Rec 8.4.* This certainly falls well short of P2 above and does not adequately represent the rights of shareholders of issuers.

Our answers to the questions in Part A generally assume our "Substantive Input" is accepted (e.g. we would not support flexibility of issuers to conduct ANREOs under the Rules, without support for the changes set out above).

[Aside – while we commend the Review for clarifying that the discount of the issue price to the market price for a PRRI is not a cost to the issuer (it should be clear that any dilution in per share metrics is compensated by owning more shares)- we were disappointed that the insight was not more consistently reflected in the discussions in the Review].

Part A: NZX Capital Raising Settings

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.

Yes – where we interpret "protection" as the ability to price the (latter) retail tranche at the minimum of the price of the (former) institutional tranche and the share price at the time of the 2nd tranche.

However, NZX should give issuers the flexibility to offer this "protection" but not mandate its provision. The 2-leg structure posited, gives retail shareholders an option which has value. The issuer should believe the consequent value transfer, to retail shareholders, is supported by the gains of the structure to the issuer as a whole (i.e. all shareholders) (most likely due to the underwriting fee savings which arise from the shorter term of institutional component of the structure).

In contrast, where issue structures realize the value of rights at different times for different shareholders, no adjustments should be made for the different prices realized (that's just markets being markets – prices go up and down).

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?

Yes & No – we believe that NZX rules should allow ANREOs subject to an obligation of the Issuer to fully justify the choice of structure, consistent with full recognition of shareholder rights.

Firstly, as set out in our Primary Response, ANREOs do not recognize shareholder rights as we have presented them (and incidentally, neither do placements).

We note further in response to the framing of the question that

- The appropriate response to ANREOs dressed up as AREOs, is to change the Rules to disallow them
- The 1:1 limit proposed is arbitrary – and may not provide the access to capital which the issuer requires. Specifically we strongly disagree with any implication that ANREOs at 1:1 ratio are "ok" – it's clear they could usurp material value from shareholders who do not take up rights (where the discount of the offer price to the market price is large).

In our view, there are contingencies where ANREOs are the optimal solution (e.g. where PRRIs are not doable) and flexibility should be provided in this contingency. As argued in our Primary Response, it is critical that the decision to use an ANREO i.e. take the rights of shareholders to receive the value of rights not taken up, be clearly justified and disclosed at the time of the offer (See section 12 below) and that issuers be held to account if those justifications are inadequate.

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

Yes – the value of rights created by issuers, rightfully belongs to existing shareholders and those shareholders should have the opportunity to receive a fair price if they do not exercise those rights.

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?

Unsure - We leave this question to NZX and those representing smaller shareholders.

That said, we note that any measures which reduce the costs of pro-rata structures (including shortening the timetable and therefore reducing underwriting risk) both reduce the costs of raising capital and support the use of PRRI structures. The increased use of PRRIs both recognises shareholder rights and enhances the integrity of our market.

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.

Yes/No

ANREOs – Yes.

As set out in P3 above, we believe fairness mandates that existing shareholders should have priority for bidding for shares at a fixed price (unless that is not in the interests of the issuer). We agree that the right to buy shares should be allocated based on the holdings at record date.

We are less certain of the linking of the ability to participate in the latter tranches (e.g. subscribe for shares in the shortfall) to the decision to subscribe for shares in the accelerated tranche or to an indication of interest in over-subscriptions at the time of the accelerated tranche. (The linking is not consistent with P3)

We disagree with the linking of the size of the allocation of shares in the latter tranche to the size of the oversubscription indicated at the initial tranche – this linking does not recognize the rights under P3 and enables/ encourages “gaming”.

PRRIs – No

We would not support mandating this policy. Assuming the pro-rata offer is a PRRI, shareholders have the ability (and in the case of bookbuilds are guaranteed) to realize a fair price for their unexercised rights.

That said, we see no reason to limit the flexibility of issuers to select a structure as set out above if they choose to (we note it will result in higher underwriting costs - other things being equal).

Further, a fairer and cheaper alternative to the allocation policy described, would appear to be to tender the rights and return the proceeds to the issuer (benefitting all shareholders).

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?

Yes & No.

We note that the $50,000 limit is not supported by the Consultation paper. We would be interested in the rationale for selecting that limit.

First, note our case set out in our Primary Response, that the placement + SPP should only be selected when the decision to not fully recognize shareholder rights (i.e. use a PRRI) is justified and disclosed.

In the contingency where a placement + SPP structure is selected, we support changes which enable all shareholders to achieve a pro-rata outcome (as opposed to the cited goal of "supporting retail participation" cited in the Review) – the increase in the SPP limit would enable that.

That said, we do not favour changes to the rules which either encourage the use of placements vs PRRIs or encourage/ enable transfer of the value of rights from existing shareholders to other shareholders or 3rd parties (including other retail investors).

We ask NZX to consider the increasing the limit subject to the condition that no investor receives an allocation over $20,000 in excess of their pro-rata entitlement.

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?

Yes & No. (The argument as set out in 6. above applies – as does our suggested constraint)

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?

No – as set out in 1, we support the ability of issuers to include downside price protection, but we note that this involves judgment about the equity of providing some option value to retail shareholders - that is a judgement for issuers to make, not a condition which NZX should mandate.

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?

Yes, the allocation of the value of the rights should be referenced to the holdings of shareholders cum the announcement of the issue. At the risk of repetition, the issue arises only because the issuer has elected a structure which does allocate the value of the rights to existing shareholders.

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

Yes. That said, we would like to see improved disclosure supporting the request for ratification (i.e. why is the flexibility required, why is it in shareholders' benefit to approve it). And see the repeated comment in 9 above.

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

Unsure/ Yes & No. That said, the disclosures addressed in 12. below are orders of magnitude more important.

The critical issue in our view is that the financial relationship between the issuer and the underwriters is fully disclosed – is an underwriter a related party, what are the risks being underwritten and what is the full price being paid?

Specifically, we note that

- The value of rights allocated to the underwriters
- The option value of unsubscribed rights in an ANREO

are components of the underwriting cost in our view (funded by the shareholders who do not subscribe) and should be disclosed.

On an ex-post basis, the shares taken by the underwriters and the value of those shares at that date (negative if relevant), should be disclosed.

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.

Firstly, as set out in our Primary Response, the quality of these disclosures is critically important to recognise shareholder rights and further is a necessary condition of our support of the increased flexibility requested in 2 above (ANREOs).

Further it is important that these disclosures are made at the time of the issue (or if not available then, as soon as available thereafter).

These disclosures, we posit, fall into 2 categories

- the rationale for the non-PRRI offer
    - shareholder rights were appropriately recognized
    - where shareholder rights have been overridden, the justification for overriding them
        - where lower costs are the justification, clear disclosure of the relevant costs, noting that for a PRRI the discount of the issue price to the market price, is not a cost to the issuer
    - the process to set the issue price
    - disclosure of shareholders who were unable to access shares in the offering
        - measures in place to mitigate disadvantages to those shareholders

- the effects of the non-PRRI
    - what is the value of the rights transferred from shareholders who could not or did not subscribe to 3rd parties – split between underwriters, existing institutional, existing retail, new shareholders (based on TERP)
    - The percentage of shares held by shareholders which was diluted
    - The change in the registry composition resulting from the capital raising
    - The role of the issuer in the allocation process
    - The number of shares allocated to new shareholders
    - The number of shares allocated to the underwriters, sub-underwriters and any parties associated with the allocation process (repeating 11 above).
    - If an SPP was used, was the SPP fully subscribed? If the SPP was scaled how was the scaling done and if done on the basis of the shares cum issue, what was the effective dilution after the scaling, for the investors that were scaled?

12 (a) – We support disclosure of shortfall allocation policies.(For PRRIs we would expect that if rights are traded, any value in the shortfall would be left with the underwriter and if sold in a tender, would be returned to the shareholders).

(question 6?)

12(b) – as set out above, issues should only be non-PRRIs when sound justification exists

Where issues are not PRRIs, scaling policies should be determined to, as fairly as possible, return the value of rights to the existing shareholders.

12(c)

Bullet 1 – we support this information being disclosed when the offer is announced (as well as the information set out above)

Bullet 2 - we support this disclosure

Bullet 3 – we support this disclosure and the timeline

12(d) – we argue that the reasons should meet the standard set by P2 above. (i.e. what is the justification for non-subscribing shareholders losing the value of their rights)

We posit that the issuer be required to set out the reasons for the ANREO at the time of the issue (as per 12(c) above).

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.

We support all measures which ensure that allocations, as closely as possible, replicate pro-rata outcomes and we support NZ RegCo enforcing those measures.

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

As set out in our Primary Response above, we would like to see the underlying principles more clearly stated and the disclosures more specifically defined to ensure the objective of maximizing shareholder value is met and shareholder rights are recognized.

Part B: Listing Options

SPACs

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?

While we support the objective of NZX being an attractive market for issuers, any relaxations to the rules should be carefully considered in the context of market integrity and specifically the impact of changes on

- existing issuers (n.b. the increased flexibility provided to attract listed funds compromised the governance of existing issuers)
- the cost of new issuers adopting weakened governance standards than would otherwise have been the case

Further, it is important that the incremental issuers attracted, have governance characteristics consistent with the current integrity which the NZX Listing provides.

We would like to see a detailed proposal setting out the expected benefits to NZX (i.e. incremental demand by issuers for listings) and settings in competing exchanges. We need to do more work to posit on protections we would like to see.

We would also note in passing that the US Securities and Exchange Commission has recently proposed further regulation of SPAC listings in the US in order to protect investors.

Dual class shares

2. 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?

Unsure – please see our comments in 3. below. Our sense is that our hurdle for supporting the listing of dual class shares is high.

3. 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)?

While we support the objective of NZX being an attractive market for issuers, any relaxations to the rules should be carefully considered in the context of market integrity and specifically the impact of changes on

- existing issuers (n.b. the increased flexibility provided to attract listed funds compromised the governance of existing issuers)
- the cost of new issuers adopting weakened governance standards than would otherwise have been the case

Further, it is important that the incremental issuers attracted, have governance characteristics consistent with the current integrity which the NZX Listing provides.

We would like to see a detailed proposal setting out the expected benefits to NZX (i.e. incremental demand by issuers for listings) and settings in competing exchanges. We need to do more work to posit on protections we would like to see.

BELL GULLY

By email policy@nzx.com

Kristin Brandon
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DATE 2 September 2022

Dear Kristin

Submissions in response to NZX's targeted review on Capital Raising Settings and Listing Options

1. We refer to the consultation paper on *NZX Capital Raising Settings and Listing Options*, and accompanying proposed amendments to the NZX Listing Rules and the NZX Corporate Action Notice. Bell Gully welcomes the opportunity to be involved in the continued development of the NZX Listing Rules.

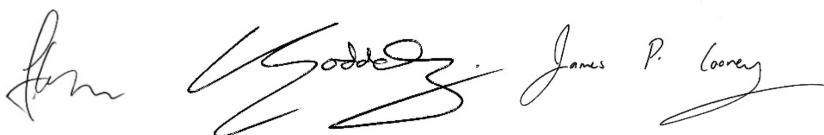
2. Our submissions are focused on the proposed changes to the capital raising settings. We have set out our submissions in the Schedule (*Responses to the consultation questions*), Annexure 1 (*Comments on amendments to the NZX Listing Rules*) and Annexure 2 (*Comments on proposed amendments to the NZX Corporate Action Notice*) of this letter. Where a proposed change is not expressly referenced in Annexures 1 and 2, we are supportive of the change. At this stage, we have no comments to make on the listing options relating to SPACs and dual-class share structures proposed in Part B of the consultation paper. However, we note that should NZX decide to progress either of the proposed options, any final decisions should be made only after a further fulsome consultation process (as opposed to a targeted review addressing specific changes to the listing rules).

3. The views expressed in our submission are those of members of our firm involved in the review of the discussion paper. They do not necessarily represent the views of our clients, although we have considered input from some of our key clients in the preparation of our submission.

4. We do not have any objection to you releasing any of the information contained in our submission or our submission in its entirety.

5. If you wish to discuss any aspect of our submission, please do not hesitate to contact us.

Yours faithfully
Bell Gully



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Partners

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SCHEDULE

NZX Capital Raising Settings and Listing Options- Targeted review – Consultation Paper Questions

Consultation questions	Bell Gully Responses
PART A: NZX CAPITAL RAISING SETTINGS	
General comment from Bell Gully A number of NZX's proposed rule changes would appear to have the effect of reducing overall flexibility for boards of directors in terms of capital raisings or otherwise making execution of these transactions potentially more onerous. Boards have well established fiduciary duties to the company and to shareholders that apply to all of their actions, including capital raisings. As NZX has noted, a number of the proposed rule changes merely entrench a current market practice. In our view, that current market practice reflects the effective operation of existing laws, including directors' duties, which protect shareholders, including retail shareholders. Accordingly, we do not consider there is a general need to supplement these laws and duties with ad hoc changes to the NZX Listing Rules where those changes may unintentionally restrict or limit the manner in which a Board can otherwise lawfully act. This is particularly the case where the COVID19-specific relief around capital raisings no longer applies.	
AMENDMENTS TO THE NZX LISTING RULES	
Question 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.	We question how NZX is expecting issuers to delineate retail shareholders from institutional investors in relation to this rule. Presumably, any such rule would be drafted to ensure a price cap for those investors in different legs of the capital raising – e.g., accelerated offer vs SPP (noting that both retail investors and institutions can participate in both "legs"). In an accelerated offer, the institutional entitlement offer and the retail entitlement offer are all the same offer – and should be on the same terms. The "retail leg" should therefore always be at the same price as the "institutional leg". For that reason, no rule change is needed to protect existing shareholders participating in the "retail leg". Similarly, we are not aware of any SPP being priced at a price that is higher than the placement price. For that reason, we query whether any rule change is actually necessary. (We assume that NZX is not suggesting the price in a shortfall bookbuild in respect of a shortfall following a retail entitlement offer should not be higher than the price obtained in a shortfall bookbuild in respect of a shortfall following an institutional entitlement offer). In principle, we do not object to a concept that shareholders should not need to pay more for shares than others pay for shares issued in different offers that are announced contemporaneously, are effectively part of the same transaction and are therefore sufficiently proximate in time to each other.

Consultation questions	Bell Gully Responses
	However, this rule would need to be carefully drafted to ensure existing shareholders can participate in all "legs" of an offer that achieved a higher price.
Question 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?	Yes, ANREOs should be permitted. ANREOs provide for a further offer structure option for boards of directors to consider, and they worked effectively during the COVID-19 restrictions – so are known and understood by the market. In general, we support NZX's stated aim to align its policy settings with the ASX listing rules where it makes sense to do so. Given that ASX LR 7.11.3 provides for a 1:1 ratio limit (subject to exceptions), we agree that the same ratio cap is appropriate and, in particular, will be beneficial for NZX/ASX dual-listed issuers.
Question 3. Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?	We agree that there should be a liquidity event for traditional rights offers. To be clear, this means that rights offers that do not involve quoted rights must have a shortfall bookbuild component. AREOs already have to have a shortfall bookbuild (and entitlements are not transferable so cannot be quoted).
Question 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?	Yes – removing the five day announcement period in both cases would give Boards more flexibility. This will reduce the underwriting period, which should in turn reduce an issuer's cost of capital. The inclusion of a requirement for a liquidity event (see Question 3 above) provides additional protection for existing shareholders who would be unable to trade out of the stock before the record date.
Question 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.	**General comments** We are not supportive of the proposed changes to NSX Listing Rule 4.3.1(a). In our view, the operation of NZX Listing Rules in connection with pro rata issues already strike an appropriate balance between the interests of an issuer in being able to raise capital flexibly and the interests of the issuer's shareholders in not being unfairly diluted – that being NZX's stated aim for those rules. By its nature, a pro rata issue ensures that all existing shareholders have the opportunity to participate in the issue and to maintain their proportionate equity interest in the entity. Therefore, an issuer's board should not be required (or incentivised) through the operation of the NZX Listing Rules to provide existing shareholders with a priority opportunity to acquire any shortfall (in excess

Consultation questions	Bell Gully Responses
	of their pro-rata entitlement) if allocating the shortfall to existing shareholders would not be in the issuer's best interests. We are also concerned that the introduction of more restricted allocation requirements could result in renounceable offers not necessarily achieving the best price for renouncing shareholders, which is inconsistent with the objectives of a renounceable offer. There is a real likelihood that limiting allocation flexibility over the shortfall bookbuild process will limit the pool of demand which, in turn, would result in a corresponding lower price being achieved for renouncing shareholders' rights in the shortfall as well as greater pricing dilution – particularly if the existing shareholders are not willing to pay as much as new investors. We are not aware of similar requirements in relation to the allocation of a shortfall for a pro rata issue being imposed by a regulator in any major overseas jurisdiction (although, as noted in the consultation paper, this is a matter that ASX is also consulting on). Boards should have the flexibility to consider a number of matters when setting their shortfall allocation policies, including**:** • how the allocation policy will impact on the issuer's ability to have the pro rata issue underwritten and the cost of that underwriting - requiring a shortfall to be allocated to existing shareholders on a priority basis may impact an underwriters' ability to manage its risk in relation to an offer (including through sub-underwriting), which could increase the cost of the underwriting; • the benefit of using the shortfall to bring new, long term, quality investors onto the issuer's register; and • whether providing a priority allocation to existing shareholders creates adviser incentives for existing shareholders who are 'overweight' in the issuer's securities or are not long term holders, to acquire additional securities where they otherwise would not (with a view to selling down the additional stake quickly) which will potentially have negative consequences for the entity's security price in the short term (and therefore be adverse to the shareholder base as a whole). NZX Listing Rule 4.5.1(e)(iii) already protects against an allocation policy favouring directors or employees (and their associates). If a board concludes that it is in the issuer's best interests to allocate part of the shortfall to a new or "under-weight" arm's length third party investor ahead of existing investors, we do not consider that the NZX Listing Rules should prevent that outcome. If NZX does introduce the proposed changes, then NZX should: • base the allocation by reference to a person's holding not what they have applied for. A shareholder's holding at the record date is likely to be more reflective of their genuine "position in the stock", as opposed to the transaction-specific incitation given by the amount applied for in the offer. Allocation by

Consultation questions	Bell Gully Responses
	reference to application amount incentivises small holdings in issuers by parties who are not natural holders of shares who want to be able to purchase shares at a discount and then quickly resell them; • limit the requirement to non-renounceable offers; • expressly permit issuers to cap the amount each retail shareholder can apply for under a retail oversubscription facility for a rights issue to help manage the shortfall allocation process and give more certainty to the sub-underwriting process (e.g., cap at up to 25% of their existing holding); • include a new exception in the NZX Listing Rules so that existing shareholders caught by NZX Listing Rule 5.2.1 can participate in the shortfall without obtaining shareholder approval, where the shortfall is allocated on a pro-rata basis by reference to a shareholder's holding (noting that the current exception in clause 5.2.2(d)(i) only expressly applies to "Accelerated Offers" and not traditional rights issues); and • provide further clarity on how NZX expects the priority opportunity to be applied in the context of an accelerated offer where there are two potential shortfalls – one following the institutional component and one following the retail component. It is not clear how retail investors would participate in these bookbuild processes, and how certainty of funding could be achieved for the issuer. In practice the changes will require the issuer to address a range of problematic logistical issues.
Question 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?	Yes – we are generally supportive of increased flexibility for Boards in terms of capital raisings (and this increase appears to reflect market practice in any event, via the use of the placement headroom, which is an indication that the amendment would be welcomed and utilised).
Question 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?	Yes – we are generally supportive of increased flexibility for Boards in terms of capital raisings. See our comments on the proposed increased disclosure items below.
Question 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?	See our answer to Question 1 above.
Question 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	We consider that the approach to scaling-back of over subscriptions has operated effectively for many years and does not require intervention by NZX. Therefore, we do not consider there is a need for further

Consultation questions	Bell Gully Responses
be by reference to holdings at the closing date of the offer as currently permitted under the rules?	rule changes around this aspect. We do however consider that the proposed "according to" language in the definition of "Share Purchase Plan" could be clarified to make it clear that the relevant holding is the sole criteria for determining scaling. One issue that has arisen from retail brokers' participation in the placement is double dipping for those underlying retail shareholder clients. A further $50,000 investment in the SPP will likely be immaterial for institutional investors. However, it may be material for advised retail shareholders (as opposed to unadvised retail shareholders who have no access to the placement). One solution for consideration would be to limit the SPP to shareholders who do not receive any placement shares (which is really the purpose of the SPP). We do consider that Boards should have some flexibility to determine scaling criteria as that is desirable to accommodate company objectives. In particular, recent market practice has permitted retail brokers and retail platforms (e.g., Sharesies) to participate in the upfront placement. A Board should be permitted to take into account allocations to retail investors under the upfront placement when determining scaling under the SPP.
Question 10. Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?	Yes. There is no principled reason for treating placements and SPPs differently in this respect.
Question 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	We do not object to the increased disclosures around underwriting as proposed and would note that most of these disclosures are already being made in NZ offer materials. We do not agree that certain details around sub-underwriting should be required. This is not necessary, where the primary obligation, the underwriting, will already be subject to the disclosure requirements. Shareholders will therefore already be aware of the key details about the underwriting position. The details of contracts that underlie the underwriting (and which do not change the terms of the primary underwriting obligation), i.e., the sub-underwriting, are unnecessary. A requirement to disclose identities of sub-underwriters is likely to discourage sub-underwriters from being involved in offers. The pool of sub-underwriters in the New Zealand market is relatively small and can include parties (including high-net-worth individuals) who may object to their identities being disclosed. The new rule may therefore reduce the pool of available sub-underwriters, which would make it more difficult for issuers to raise capital, and it may cause the cost of capital to increase as underwriters are forced to lay off risk to a smaller pool or on more favourable terms. However, we can see some justification for disclosure of sub-underwriting with “related parties” or “associates”, but not more broadly. See also our edits to Annexure 2, reflecting this position. We note that the relevant ASX disclosures require disclosures of sub-underwriters where they are substantial security

Consultation questions	Bell Gully Responses
• The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminate	holders. We do not consider that rule should not apply in New Zealand. A number of the key sub-underwriting parties in the NZ market have arms' length holdings of above 5%. The Australian market may well have a different dynamic. In the New Zealand case, NZX RegCo should not make rule amendments that make it more difficult for issuers to access that category of sub-underwriters.
Question 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):	
Question 12(a). Pro rata issues – require disclosure of the shortfall allocation policy, required as part of the proposal under question [5] above, within the offer document for a pro rata issue.	Subject to our response at Question 5, we agree that some level of disclosure of the issuer's shortfall allocation policy would assist with transparency in respect of the offer for a pro rata issue. Our experience is that market practice is to provide for generic wording. Again though, we do not consider that the disclosure rule should unduly restrict Boards where they need to be flexible in order to act in the best interests of the issuer. Importantly in this regard, the requirement to disclose an allocation policy should be a statement of intention, which does not prevent the Board from making allocations that may not be obvious or contemplated on the date of launch of the offer, but emerge during the offer and the shortfall bookbuild process and which are in the best interests of the issuer. As discussed in more detail to our response to Question 12(c) below, it is not generally practicable to disclose the shortfall allocation policy up-front. An after the fact comment on adherence to the disclosed allocation policy, noting any material departures from it, as part of a completion announcement would be the most appropriate way to deal with the need for Boards to have flexibility. In our view, NZ RegCo should not make any amendment to the rules that may increase the difficulty of attracting bids into a shortfall bookbuild as that could constrain an issuer's ability to sell the stock at a fair price. If a new disclosure requirement is introduced, NZ RegCo guidance regarding the level of detail would assist issuers understand their obligations under that requirement.
Question 12(b). Scaling policies for SPPs, Rights issues and Accelerated Offers	To the extent scaling policies are required to be disclosed, there should be flexibility to disclose the scale-back arrangements to be applied either in the offer documentation or following the close of the offer. In many circumstances, it will not be appropriate for an entity to lock itself into a scale-back approach at the start of the offer. Rather, the decision on the approach to scale-back is one that is better made once details on the number and size of applications is known.

Consultation questions	Bell Gully Responses
Question 12(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.	We do not object to these disclosures being required. We note that they appear as requirements of the ASX Appendix 3B form. We do note the concerns that we raise at Question 12(d) below about Boards needing to justify ANREOs compared to other structures. We do not consider it helpful for the rules to create the perception that placements are somehow "frowned" upon. They are a legitimate and effective means of issuers raising capital.
• 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.	We accept that it is standard practice for an issuer to provide details of who may participate in a placement, but we do not consider it necessary to make this a requirement in the listing rules. We are not supportive of the broadening of disclosure requirements for allocations in placements beyond the disclosures that will be required for a Corporate Action Notice above. These will require an issuer to disclose why it has chosen to do a placement rather than a pro rata rights issue or an offer under an SPP which, together with substantial holder notices, provide a sufficient level of transparency for a fair market. In contrast, requiring disclosure on whether existing shareholders are "entitled to participate in the offer, and if so, on what basis" upon the initial announcement of a placement risks creating an expectation, or perception, that existing shareholders have an "entitlement" to participate in placements (and could lead to an expectation that placements will be allocated on a "pro rata" basis) when that is precisely the opposite of what NZX Listing Rule 4.5 has required. The very purpose of the placement "headroom" is to give issuers the freedom to undertake issues up to a percentage cap, without reference to the existing shareholders. This is a valuable tool for listed issuers and is a feature of the listing rules and issuer constitutions that investors buy into when they invest in NZX listed companies. Issuers may choose to undertake a placement to ensure speed of execution where there is an urgent need for cash for balance sheet repair or other reasons, or to take an opportunity to introduce a value-enhancing strategic investor onto the share register. In addition, as pointed out in the Australian Financial Markets Association's submission (**AFMA submission**) on the equivalent proposed changes to the ASX Listing Rules, there are practical issues to consider should such disclosures be required The issuer may at the time of allocation have no visibility regarding how retail brokers or retail platforms allocate the gross number of shares allocated to them. How allocations are made is very much influenced by demand for shares in the placement which is not understood until after the placement has launched. The circumstances of the transaction which exist prior

Consultation questions	Bell Gully Responses
	to launch often change during execution, and issuers need flexibility to adapt and make allocations which are in their best interests. Further, as also addressed in the AFMA submission, prescribing that issuers must, at the outset, disclose if there is an entitlement for existing shareholders to participate in a placement may be problematic for issuers who wish to have the placement underwritten as it is likely to impact on an underwriter's ability to manage its risk in relation to an offer (including through sub-underwriting) which could in turn increase the cost of underwriting. It will also be problematic if shareholders who wish to participate in the placement do not meet any on-boarding or required credit approval requirements of the underwriter.
• 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)	For the reasons noted above, we do not agree with the requirement for this disclosure as it is likely to create an expectation of shareholder participation in placements. That expectation should not be created. Further, we suspect that generic, market practice wording will develop (as was seen when issuers were required to disclose allocation policies when relying on the COVID-19 temporary relief). Such disclosure adds little to transparency over the allocation process and is not helpful disclosure for shareholders.
Question 12(d). Reasons for selecting an ANREO structure	We do not agree that this disclosure should be required. Boards will make decisions on the capital raising structure in accordance with their fiduciary duties, with many considerations being taken into account. Requiring Boards to give reasons for, or justify, the selection of an ANREO implies that the ANREO, even though permitted by (the amended) Listing Rules, is inferior or in some way more risky for the shareholders than other structures. Where NZ RegCo has made a decision to amend the rules to permit ANREOs, use of that structure should not in our view be "tainted" by the requirement for "justification disclosures."
Question 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.	We query whether the proposed requirement for issuers to provide NZ RegCo with detailed allocation schedules on request is appropriate given that the basis of allocation outcomes determined by issuers is commercially sensitive information to both the issuer and the investors. We also understand that this may have an overall negative impact on the ability of issuers to raise capital as bookbuild participants may be sensitive to the potential disclosure of their allocation to NZ RegCo which could reduce the demand pool for an offer. If there are circumstances which require the provision of such information, it would be more appropriate for NZ RegCo to exercise its powers under L.R. 9.12.

<table>
<tr><th>Consultation questions</th><th>Bell Gully Responses</th></tr>
<tr><td>Question 14. NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.</td><td>If any disclosure requirements are introduced, as noted above, guidance regarding the expected level of detail required would assist issuers understand their obligations and help avoid generic disclosure which is used by all issuers. Disclosure requirements should not unduly restrict Boards choices – their overriding duty to act in the best interests of the company will suffice in many cases.

In addition, any guidance should be open-ended and not lead to a general recommendation favouring a particular offer structure. Those decisions should be made by the Board given the context of the capital raising and objectives of the issuer at the time.</td></tr>
<tr><td colspan="2">PART B: LISTING OPTIONS</td></tr>
<tr><td colspan="2">1. SPECIAL PURPOSE ACQUISITION COMPANIES (SPACS)</td></tr>
<tr><td>Question 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?</td><td rowspan="4">At this stage we have no comments to make on the listing options relating to SPACs and dual-class structures proposed in the consultation paper. However, we note that should NZX decide to progress either of the proposed options, any final decisions should be made only after a further fulsome consultation process (as opposed to a targeted review addressing specific changes to the listing rules). The New Zealand market is very different to the US market, where SPACs have proliferated in recent times, so it is likely that adoption of rules that apply in the US will not be “fit for purpose” in New Zealand. -</td></tr>
<tr><td>2. DUAL CLASS SHARES</td></tr>
<tr><td>Question 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?</td></tr>
<tr><td>Question 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)?</td></tr>
</table>

Annexure 1 – Bell Gully's comments on proposed amendments to the NZX Listing Rules

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
Glossary	
Part A - Definitions	
Renounceable in relation to a Right or an offer of Equity Securities means that both: (a) the Right issued in relation to the offer of Equity Securities is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates), and (b) the offer of Equity Securities in relation to which the Right is issued includes: (i) Quotation of Rights, and/or (ii) one or more bookbuild(s) for the Shortfall, in respect of which the net proceeds are accounted to non-participating holders of Equity Securities (including any holder excluded from the offer under Rule 4.4.1 (e)).	We agree that the concept that a liquidity event should be required for a renounceable offer (i.e., a traditional rights issue). The definition of "Renounceable" is difficult in the context of Accelerated Offers, given an entitlement is not a security in the same way that a right is and, as a result, entitlements are not transferable like rights are. This has meant that "Accelerated Offers" are not actually Renounceable for the purposes of the NZX Listing Rules (despite them being commonly referred to as such). This has worked within the existing NZX Listing Rules as LR 4.3.1 requires that pro-rata offers are either Renounceable or an Accelerated Offer. If NZX intends to change the application of the rules such that Accelerated Offers can either be Renounceable or Non-Renounceable, this definition would need further amendment to achieve this. In particular, (a) would need to be removed. For example, it could say: "*Renounceable* *an offer of Equity Securities will be Renounceable if the terms of the offer include either:* (a) *the issue of Rights that are both:* (i) *transferable by the holder to another person (whether or not an existing holder of any Equity*

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
	Securities to which the Right or offer relates); and (ii) *Quoted; or* (b) *one or more bookbuild(s) for the Shortfall, in respect of which the net proceeds are accounted to non-participating holders of Equity Securities (including any holder excluded from the offer under Rule 4.4.1 (e)).*
Right means any right (whether conditional or not, whether Renounceable or not and whether Quoted or not) to acquire an Equity Security, including a right under a Share Purchase Plan, which arises or is issued in connection with an Equity Security.	
Share Purchase Plan means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where: (a) the consideration payable for the Equity Securities issued under all of the Issuer's Share Purchase Plans (other than any Share Purchase Plan that has been ratified by an Ordinary Resolution) does not in any 12 month period exceed $50,000 per	In (d), if the intention is that the sole criteria should be the relevant holding on the Record Date, the word "only" could be added after the new wording "according". See our comment in relation to Question 9 that Boards should have flexibility as to scaling under an SPP. See our comments in relation to Question 1 regarding the proposed new paragraph (c) of this definition.

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner), (b) the number of Equity Securities to be issued does not exceed 10% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, (b) (c) the consideration payable for each Equity Security offered does not exceed that payable by participants under any other offer of Equity Securities announced together, or made in connection, with the Share Purchase Plan, and (d) if the offer is oversubscribed, all oversubscriptions are accepted (subject to paragraphs (a) and (b) above or such lower limits contained in the Offer Document) or oversubscriptions will be scaled according to the number of fully paid Equity Securities carrying Votes held by those accepting the offer on the Record Date, and (e) the Offer Document for the offer must set out the matters in (a) to (d) above.	
Shortfall in relation to a pro rata offer of Equity Securities means the aggregate of: (a) any excluded holders' Rights, or the Equity Securities to which any excluded holders would be entitled if they were eligible to participate in the offer, and (b) any unexercised Rights, or the Equity Securities in respect of those unexercised Rights.	

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
Section 4 - Changes to Capital	
Rules applying to Issuers of Equity Securities	
4.3 Pro-rata issues and Share Purchase Plans	
4.3.1 An Issuer may issue Equity Securities if those Equity Securities are: (a) offered to existing holders of the Issuer's Equity Securities on a basis which, if the offer were accepted in full by all such holders, would maintain the proportionate Voting and distribution rights of each holder (subject only to rounding), and: (i) that offer is Renounceable and/or an Accelerated Offer, (ii) oversubscriptions for any Shortfall must be permitted by holders who are not excluded under Rule 4.1.1(e) and have applied for their full entitlement in the offer, (iii) any Shortfall must first be allocated to those holders who have applied for their full entitlement and oversubscribed in the offer, on a pro rata basis according to either: (A) the number of fully paid Equity Securities carrying Votes held by those holders on the Record Date, or (B) the number of Equity Securities they have oversubscribed for in the offer, (iv) any Offer Document for the offer or, if there is no Offer Document, the information provided under Rule 4.17.6(b) or 4.17.7(b) must set out the allocation policy to be applied to any Shortfall.	The rule cross reference highlighted grey should be LR 4.4.1(e). Please see our comments on the definition of "Renounceable", and our comments in relation to Question 5 in the Schedule regarding L.R. 4.3.1(a)(i) to (iv).

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
(b) issued to existing holders of the Issuer's Equity Securities as fully paid Equity Securities on a basis which maintains the existing proportionate Voting and distribution rights of each holder (subject only to rounding), or (c) offered to existing holders of the Issuer's Equity Securities under a Share Purchase Plan.	
4.4 Rules applicable to pro-rata issues and Share Purchase Plans	
4.4.1 Notwithstanding Rule 4.3.1, an Issuer is entitled to: (a) subject to Rule 4.3.1(a)(iii), issue any Equity Securities which have been offered under Rule 4.3.1(a) and not taken up, or held back because of fractional entitlements, provided the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer and the issue is completed within three months of the close of that offer, (b) issue Equity Securities to existing holders of the Issuer's Financial Products where the right to participate in future issues is specifically attached to those existing Financial Products, regardless of the effect on existing proportionate rights to Voting and distribution rights, (c) authorise a disproportionate offer to the extent necessary to round entitlements to a whole number, round up holdings to a Minimum Holding, or to avoid the creation of holdings which are less than Minimum Holdings, (d) not offer Equity Securities to holders of existing Equity Securities where the terms of those existing Equity Securities expressly exclude the right to participate in the relevant issue, and (e) not offer Equity Securities to holders outside New Zealand if, in the Issuer's reasonable opinion, it would be unduly onerous for the Issuer to make that offer in that jurisdiction, provided that in a Renounceable Rights offer the Issuer must arrange the sale of any excluded holders' Rights, or the underlying Equity Securities to which any excluded holders would be	

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
entitled if they were eligible to participate, and account to excluded holders for the net proceeds.	
4.4.2 An Issuer making an Accelerated Offer under Rule 4.3.1 (a) must comply with the following requirements (as applicable to the type of Accelerated Offer undertaken by the Issuer): (a) any bookbuild(s) must be undertaken pursuant to the terms set out in the Offer Document, (b) if the Accelerated Offer is Renounceable, instead of arranging the sale of Rights under Rule 4.4.1(e), new Equity Securities of Ineligible Shareholders must be offered under one or more bookbuild(s) undertaken in relation to the Accelerated Offer and any net premium achieved in excess of the price must be returned to Ineligible Shareholders. (c) if the Accelerated Offer is non-Renounceable: (i) the ratio of Equity Securities offered must not be greater than one new Equity Security for each existing Equity Security held, and (ii) any Offer Document relating to the Accelerated Offer or, if there is no Offer Document, the information provided under Rule 4.17.7(b) must include a statement as to: (A) the reason(s) why the Issuer has chosen to make the Accelerated Offer non-Renounceable and why the non-Renounceable nature of the Accelerated Offer is considered to be in the best interests of the Issuer, and (B) the impact of the non-Renounceable nature of the Accelerated Offer on non-participating holders of Equity Securities, (d) notwithstanding Rule 4.17.1, Eligible Institutional Shareholders may be notified of their entitlements under the Accelerated Offer by electronic means and prior to the Record Date,	We agree with proposed new L.R. 4.4.2(c)(i) for the reasons set out in our response to Question 2. However, we do not agree with new L.R. 4.4.2(c)(ii) as outlined in our response to Question 12(d).

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
(e) notwithstanding Rule 4.17.2, any Institutional Entitlement Offer component of an Accelerated Offer may be open for less than 12 Business Days (or 7 Business Days, as applicable) provided that any Offer Document relating to the Accelerated Offer clearly states or, if there is no Offer Document, applicants are advised before subscription that a shorter than usual offer period will apply to Eligible Institutional Shareholders under the Institutional Entitlement Offer (including the length of such shorter period),	
(f) if Rule 4.17.6 would otherwise apply to the Accelerated Offer, rather than comply with Rule 4.17.6(d), an Issuer may elect for the Quotation of Renounceable Rights to cease at the close of trading on the day 4 Business Days before the closing date of the Retail Entitlement Offer, and: (g) Rule 4.19.1 must be separately applied to an Institutional Entitlement Offer and a Retail Entitlement Offer.	
4.4.3 For the purposes of Rule 4.4.2, the following terms bear the following meanings: **Institutional Entitlement Offer** means an accelerated pro-rata entitlement offer of Equity Securities made at a fixed price (which must not be less than the price at which Equity Securities are offered in any related Retail Entitlement Offer) to the Issuer's Eligible Institutional Shareholders, usually conducted and completed before a Retail Entitlement Offer. **Retail Entitlement Offer** means a pro-rata offer of Equity Securities, made at the same ratio of the related Institutional Entitlement Offer, to existing retail shareholders in New Zealand and certain eligible overseas jurisdictions (if relevant), who did not receive an offer under such Institutional Entitlement Offer.	See our comments in relation to Question 1 regarding the proposed changes to the Institutional Entitlement Offer definition.
4.17 Placement, Rights, Share Purchase Plan and warrant issues additional requirements	
4.17.1 Letters of entitlement to Rights (whether or not Renounceable) are to be sent within 5 Business Days after the Record Date for the determination of the	

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
entitlement and by means that will give all holders of Rights, including those who are both participating and live overseas, reasonable time to respond.	
4.17.2 Without limiting Rule 4.17.1, the closing date for applications under an offer of Equity Securities in respect of which Rights will be issued (whether or not Renounceable) must be at least: (a) 12 Business Days after the last letter of entitlement is sent, or (b) 7 Business Days after the last letter of entitlement is sent, provided that holders of Rights are able to accept the offer using electronic means. 4.17.3 Renunciations of a Renounceable Rights issue must be made on or before the closing date for receipt of applications. 4.17.4 Entitlements to Rights may be scaled up to a Minimum Holding and can be altered to disregard fractions. Any Offer Document for the offer of Equity Securities in respect of which Rights will be issued must state the terms on these matters. 4.17.5 The terms of an offer of Equity Securities in respect of which Renounceable Rights will be issued must provide that, if the Issuer receives both a renunciation and an acceptance in respect of the same Right(s), the renunciation takes priority over the acceptance.	
4.17.6 For an offer of Equity Securities in respect of which Renounceable Rights will be issued and Quotation of the Renounceable Rights is sought, notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX together with any QFP notice (unless the QFP notice has already been released through MAP). If such Quotation is granted: (a) such notice must be provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the offer of Equity Securities (to the extent such information is available),	We query whether the record date could be the day before launch (as with an SPP) rather than following launch. As drafted, the quickest timetable could have the Ex Date on the launch date and the record date would be the next business day. However, no trades could be executed and completed within that one business day timeframe, making that one day delay pointless. The same comment is made for Accelerated Offers. We refer to our response to Question 4 regarding the removal of the five day requirement in new L.R.4.17.6(b) and new L.R.4.17.7(b).

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
(b) such notice must be released through MAP promptly and without delay after the decision to make the offer of Equity Securities has been made and no later than the Ex Date for the offer of Equity Securities, (c) the Quotation of Renounceable Rights will commence on the Ex Date for the offer of Equity Securities or such other date approved by NZX, (d) the Head Security to which the Rights relate will be quoted ex rights on the Ex Date for the offer of Equity Securities, and (e) Quotation of Renounceable Rights issue will cease at the close of trading on the day 4 Business Days before the closing date for receipt of acceptances and renunciations under the offer of Equity Securities. 4.17.7 For an offer of Equity Securities in respect of which Rights will be issued (whether Renounceable or not)but Quotation of the Rights is not sought, notice, in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP). Such notice must be: (a) provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the offer of Equity Securities (to the extent such information is available), and (b) released through MAP promptly and without delay after the decision to make the offer of Equity Securities has been made and no later than the Ex Date for the offer.	
4.17.8 If Equity Securities are to be issued under a Share Purchase Plan: (a) either: (i) the Record Date must precede the Issuer's announcement of the Share Purchase Plan to the market, and (ii) notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice	

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
(unless the QFP notice has already been released through MAP). Such notice must be: (A) provided to NZX (not for public release) at least 5 Business Days before the Ex Date for the Share Purchase Plan (to the extent such information is available), and (B) released through MAP promptly and without delay after the decision to make the Share Purchase Plan offer has been made and no later than, one Business Day after the Record Date, or (b) the Issuer must give notice in the manner required by Rule 4.17.6(a) and (b).	
4.17.9 If Equity Securities are to be issued under Rule 4.5.1: (a) notice in the manner and form required by NZX must be completed and supplied by the Issuer to NZX, together with any QFP notice (unless the QFP notice has already been released through MAP). Such notice must be: (i) provided to NZX (not for public release) at least 5 Business Days before the offer of Equity Securities is proposed to be made (to the extent such information is available), and (ii) released through MAP promptly and without delay after the decision to make the offer has been made. (b) any Offer Document for the offer or, if there is no Offer Document, the information provided under Rule 4.17.9(a) must state whether or not existing holders of the Issuer's Equity Securities are eligible to participate in the offer and the basis upon which that participation is determined, (c) within 5 Business Days of the issue of the Equity Securities the Issuer must release through MAP details of the approach the Issuer took in identifying investors to participate in the offer and how it determined their respective allocations in the offer (including the key objectives and criteria that the	We refer to our responses to Question 12(c) regarding the disclosure requirements in new L.R.4.17.9(b) and new L.R.4.17.9(c).

Proposed amendments to the NZX Listing Rules	Bell Gully's comments
Issuer adopted in the allocation process, whether one of those objectives was a best effort to allocate on a pro rata basis to existing holders of the Issuer's Equity Securities, and any significant exceptions or deviations from those objectives and criteria), and	
(d) within 5 Business Days of being requested to do so by NZX, the Issuer must provide to NZX (not for public release) a detailed allocation spreadsheet in electronic format showing: (i) details of the persons to whom Equity Securities were allocated in the offer (including their name, existing holding of the Issuer's Equity Securities as understood by the Issuer, the number of Equity Securities they applied for at or above the final price or were offered in the offer, and the number of Equity Securities they were allocated), and (ii) details of the persons who applied for Equity Securities at or above the final price and who did not receive an allocation in the offer (including their name, existing holding of the Issuer's Equity Securities as understood by the Issuer, and the number of Equity Securities they applied for at or above the final price). 4.17.10 This Rule 4.17 is subject to Rule 4.4.2.	We refer to our responses to Question 13 regarding the disclosure requirements in new L.R.4.17.9(d).

Annexure 2 – Bell Gully's comments on proposed amendments to the NZX Corporate Action Notice

<table>
<tr><th>Extracts from Draft NZX Template Corporate Action Notice</th><th>Bell Gully's Comments</th></tr>
<tr><td>[NOTE: This form must be used by an Issuer to notify the market of a corporate action other than a distribution (for example: a Rights issue, Accelerated Offer, bonus issue, Placement or Share Purchase Plan).

There are different times when this form must be released via the Markets Announcement Platform (MAP) depending on the type of action.

This form must be submitted to NZX for release through MAP:

• in compliance with Listing Rule 4.17.6 or 4.17.7 for a Rights issue or Accelerated Offer;
• in compliance with Listing Rule 4.17.8 for a Share Purchase Plan; and
• in compliance with Listing Rule 4.17.9 for a Placement
• in compliance with Listing Rules 3.14.1, at least 5 Business Days prior to the Record Date for other types of corporate action.]</td><td></td></tr>
<tr><td>
<table>
<tr><th colspan="2">Section 1: Issuer information (mandatory)</th></tr>
<tr><td>Name of issuer</td><td></td></tr>
<tr><td>Class of Financial Product</td><td></td></tr>
<tr><td>NZX ticker code</td><td></td></tr>
<tr><td>ISIN (If unknown, check on NZX website)</td><td></td></tr>
<tr><td>Name of Registry</td><td></td></tr>
<tr><td>Type of corporate action(Please mark with an X in the relevant box/es</td><td>
<table>
<tr><td>Share Purchase Plan/retail offer</td><td></td><td>Renounceable Rights issue or Accelerated Offer</td><td></td></tr>
<tr><td>Capital reconstruction</td><td></td><td>Non-Renounceable Rights issue or Accelerated Offer</td><td></td></tr>
</table>
</td></tr>
</table>
</td><td>Rights Issues and Accelerated Offers are distinct transactions. Could there be separate boxes for:</td></tr>
</table>

Extracts from Draft NZX Template Corporate Action Notice					Bell Gully's Comments
	Call		Bonus issue		Renounceable Rights Issue Renounceable Accelerated Offer Non-Renounceable Rights Issue Non-Renounceable Accelerated Offer
	Placement				
Record date	[dd/mm/yyyy]				
Ex Date (one business day before the Record Date)	[dd/mm/yyyy]				
Currency					
External approvals required before offer can proceed on an unconditional basis?	Y/N				
Details of approvals required					

Section 2: Rights issue or Accelerated Offer (delete full section if not applicable, or mark rows as N/A if not applicable)*					
If Accelerated Offer, structure	[AREO, ANREO, SAREO, PAITREO etc]				
Number of Rights to be issued or entitlements available for security holders in the Accelerated Offer					
Maximum number of Equity Securities to be issued if offer is fully subscribed					
ISIN of Rights (if applicable)					
Oversubscription facility	Y/N				
Details of scaling arrangements for oversubscription					
Entitlement ratio (for example 1 for 3) Please contact NZX ahead of announcing the offer if each Right will be exercisable for more or less than one Equity Security (i.e unless prior arrangement is made, Rights will be exercisable on a one for one basis)	New		Existing		
Treatment of fractions**					

Extracts from Draft NZX Template Corporate Action Notice		Bell Gully's Comments
Subscription price (per Equity Security)	$	
Letters of entitlement mailed	[dd/mm/yyyy]	
Offer open	[dd/mm/yyyy]	
Offer close	[dd/mm/yyyy]	
Quotation date[1] (if Rights will be quoted)	Market open on: [dd/mm/yyyy]	
Allotment date	Market open on: [dd/mm/yyyy]	
Section 6: Share Purchase Plans/retail offer (delete full section if not applicable, or mark rows as N/A if not applicable)*		
Number of Equity Securities to be issued OR Maximum dollar amount of Equity Securities to be issued		The "scaling reference date" row could be deleted if the proposed change to the definition of SPP is made.
Minimum application amount (if any)		
Maximum application amount per Equity Security holder		
Subscription price per Equity Security		
Scaling reference date	By reference to holdings at [*Record Date/closing date*]	
Closing date	[dd/mm/yyyy]	
Allotment date	[dd/mm/yyyy]	

[1] The Quotation date for Rights will usually be the Ex Date (Listing Rule 4.17.6(b)).

Extracts from Draft NZX Template Corporate Action Notice		Bell Gully's Comments
Section 7: Placement (delete full section if not applicable, or mark rows as N/A if not applicable)		
Number of Equity Securities to be issued		The number of placement shares and price may not be known if the placement is not a fixed price placement.
Issue price per Equity Security	$	
Proposed issue date	[dd/mm/yyyy]	
Existing holders eligible to participate	Y/N	
Related Parties eligible to participate	Y/N	The requirement to disclose the basis upon which participation by existing Equity Security holders will be determined is inconsistent with a placement, which is a permitted exception to the requirement for existing shareholders to participate unless shareholder approval has been obtained. We suggest deleting this row. The grey shaded wording is not necessary.
Basis upon which participation by existing Equity Security holders will be determined		
Purpose(s) for which the Issuer is issuing the Equity Securities		
Equity Securities to be issued subject to voluntary escrow	Y/N	
Number and class of Equity Securities to be issued that will be subject to voluntary escrow and the date from which they will cease to be escrowed		
Section 8: Lead Manager and Underwriter (mandatory)		
Lead Manager(s) appointed	Y/N	See proposed changes shaded grey. See our response to Question 11.
Name of Lead Manager(s)		
Fees, commission or other consideration payable to Lead Manager(s) for acting as lead manager(s)		

Extracts from Draft NZX Template Corporate Action Notice		Bell Gully’s Comments
Underwritten	Y/N	
Name of Underwriter(s)		
Extent of underwriting (i.e. amount or proportion of the offer that is underwritten)		
Fees, commission or other consideration payable to Underwriter(s) for acting as underwriter(s)		
Sub-underwritten	Y/N	
Name of Sub-underwriter(s) who are Related Parties or Associates of the Issuer		
Fees, commission or other consideration payable to Sub-underwriter(s) who are Related Parties or Associates of the Issuer		
Summary of significant events that could lead to the underwriting being terminated		

CAPITAL RAISING SETTINGS REVIEW

Bruce & Barbara Walling <bandb.walling@gmail.com>

Sat 7/30/2022 11:59 PM

To: NZX Policy <policy@nzx.com>

Please consider my following feedback for the above review.

"I have always considered it to be totally inequitable that institutional investors are more often than not given first bite at capital offerings. This is like competing to get into the 1st XV, when the coach tells you to" hang in there kiddo-we'll bring you on if we need you".
It's a totally uneven playing field for retail investors-"we'll call on you if we don't raise enough capital through institutional investors!"
C'mon-give everyone a fair go. The offeror still raises capital, but keeps everybody [especially existing 'smaller' investors] happy in that they are at least being treated fairly by the company they have had the faith of investing in.
And by the way, the offeror will also need to be very fair-handed in any scaling found to be necessary. Don't set the bar too high.

I trust the above feedback format is acceptable and I sincerely hope that my point of view is not only seriously considered, but results in a more even playing field."

Yours Sincerely from an active long-time investor [retail that is!]

Bruce Walling
2 Berdinner Rd
Stanmore Bay
Whangaparaoa 0932
021.122.5191

chapman tripp

Submission by Chapman Tripp to NZX Capital Raising Settings and Listing Options Targeted Review

2 September 2022

Please contact **Rachel Dunne (Rachel.Dunne@chapmantripp.com or +64 9 357 9626)** or **Philip Ascroft (Philip.ascroft@chapmantripp.com or +64 9 357 9692)** in respect of this submission.

	Question	Comments
Part A: NZX Capital Raising Settings		
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?	We support the proposed amendments to the NZX Listing Rules as drafted. It is important that the proposed drafting, which allows an issuer the **option** to differentially price different components of a rights offer, is carried forward. We do not support making inclusion of differential pricing mandatory. The ability to offer retail shareholders downside protection is a differentiator between placement/SPP and AREO structures. We understand the pricing being fixed for the entirety of the offer period is a key reason why discounts to AREOs tend to be wider than under a comparative placement & SPP structure that includes a downside pricing protection mechanism, as the retail offer should be more attractive to retail investors (and therefore easier to underwrite) if they are not exposed to pricing risk for the entire offer period.

	Question	Comments
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?	Yes – ANREOs are important to have as a potential offer structure in certain scenarios. As recognised through the COVID-19 waivers, ANREOs are particularly important in the context of acquisitions, distressed/recapitalisation raisings where other offer structures are unlikely to attract new investor support, or where there is a large known or likely shortfall in advance. An ANREO may be the most appropriate form of capital raising where: • Some form of rights offer is required if the 15% placement threshold is not sufficient from a sizing perspective and it is not practicable to seek shareholder approval in advance/during the offer period due to market volatility or the urgency of funding; • A large shortfall is expected meaning rights trading or a shortfall bookbuild would result in downward share price pressure to the offer price. • Used to fund an acquisition, given the certainty of outcome and expected lower underwriting cost through an ANREO compared to other offer structures. The first two circumstances are particularly present in recapitalisations where a failure to successfully execute the equity raising may lead to a breach of banking covenants / insolvency. We agree that a 1:1 cap appropriately balances the interests of shareholders and issuers, and provides suitable protection against undue dilution arising from an ANREO for shareholders who are unable or unwilling to participate. We note that a key difference between the capital raising settings of NZX and ASX is the ability for issuers to utilise ANREOs, and this is a topic that is frequently raised with us by issuers and other advisers, given these are a common and well accepted structure in the Australian market.
3	Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?	Yes, so long as the NZX Listing Rules are amended to permit the use of ANREOs as endorsed above. If issuers are able to use ANREOs, then we agree that renounceable structures should require a liquidity event, as the circumstances in which an ANREO are appropriate are those in which it would not be appropriate to require a liquidity event.
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?	Yes, this should be permitted for traditional rights offer and SPPs to remove any mismatches between offer structures. We also encourage NZX to shorten the offer period to three or five business days where online acceptances are the exclusive means of acceptance. Shareholders appear to have become sophisticated in responding to these offers, and we are aware that most offers are now undertaken on any online only basis (which was not the case for offers made in reliance on the COVID-19 relief in 2020). Allowing issuers to shorten the timetable would further help reduce the period of market risk to which issuers (and therefore underwriters) are exposed.

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.	No. We disagree with this for the following reasons: 1) Existing shareholders have already been treated fairly in pro rata offers and while they are often invited to apply for more than their entitlement, requiring this is in all cases would not take into account the objectives of the issuer. Those objectives may include further diversifying its share register in order to increase liquidity or introducing new shareholders who can support future equity raisings. 2) We note that offers which allowed for retail oversubscriptions in this manner started out simply allowing existing holders who took up all their rights to subscribe for additional shares. We understand this caused concern about the perceived unfairness of someone who held a relatively small number of shares being able to preferentially apply for a high number of shares when compared to investors participating in shortfall bookbuilds or sub-underwriting. In order to address this, later offers capped the extent to which existing holders could oversubscribe – e.g. at 150% of their pro rata entitlement. The cap was set on a case by case basis, having regard to the size of the offer, selecting a suitably round number, and taking into account any recent placements and so on. A different cap will be appropriate for each capital raising, so it is difficult to build this into general rules. 3) The proposed draft listing rules would mean that an issuer would always be required to offer the shortfall under the rights offer. While relatively uncommon, it is possible for an issuer to undertake a rights offer that is non-underwritten, or an AREO that is underwritten as to the institutional component only. In those circumstances, it may be the case that the issuer would be comfortable with simply receiving the pro rata entitlements from shareholders, and not wish to offer the shortfall to an underwriter, existing shareholders or any other persons. If an issuer is always required to offer the shortfall to existing holders, it may encourage the use of placements + SPPs (where this is not so required), or issuers undertaking smaller rights offers but having them fully underwritten (which will increase costs to the issuer, but provide certainty as to the proceeds received, rather than setting a larger non or partially underwritten offer where there is less need for certainty as to the proceeds received). 4) The proposed drafting could result in the breach of the Takeovers Code, Overseas Investment Act and other legislative limits. The drafting does not allow an issuer to reject an application that would be in breach of any applicable legislative thresholds. We also do not support scaling on a pro rata basis according to the number of equity securities they have oversubscribed for, as this may result in people "overstating" their application in the expectation of scaling back, which is the circumstances that may lead to an inadvertent breach of legislative thresholds. To address this issue, if NZX is to make the proposed change (which we do not support for the reasons outlined above), we suggest that the drafting of clause 4.3.1(a)(ii) is amended so that it includes "provided that an Issuer need not accept any such oversubscriptions, whether generally or in the case of one or more particular

	Question	Comments
		holders, if, in the Issuer's reasonable opinion, the legal consequences of the Issuer accepting such oversubscriptions would be unduly onerous".
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?	Yes. Market structures have evolved with $50,000 using part of an issuer's placement capacity becoming common place and well expected in SPPs, but it is not possible for issuers to size all offers at $50,000 using placement capacity given there may be a need to use this capacity for other purposes. We note that the $15,000 limit has not been increased since 2009. At the time of the increase, the Securities Commission noted the changes were appropriate to maintain parity in trans-Tasman rules, and increasing the cap would increase NZX issuers' ability to extend SPPs to retail investors at low cost, and the $15,000 cap remains consistent with the policy objective of limiting the risk to individual investors by capping participation at a relatively modest amount. Given changes in purchasing power over time, changes to the ASIC instrument (allowing for up to A$30,000) and a general perceived increase in the sophistication of retail investors, we consider that an increase to $50,000 would be timely and consistent with the original policy objectives of an SPP. We note that increasing the limit to $50,000 would simplify these offers and avoid any unintended consequences of issuers using placement capacity to "top up" an SPP offer (for example, an issuer could, at least in theory, scale participation in an offer to the extent it was using placement capacity at its sole discretion without regard to existing holdings).
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?	Yes. As noted above, SPPs can be an effective and retail investor friendly option for raising capital.
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?	We support the proposed amendments to the NZX Listing Rules as drafted. It is important that the proposed drafting, which allows an issuer the **option** to differentially price different components of a placement plus SPP, is carried forward. We do not support making inclusion of differential pricing mandatory.

<table>
<tr><th></th><th>Question</th><th colspan="2">Comments</th></tr>
<tr><td>9</td><td>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?</td><td colspan="2">We support this change for consistency across offers. While there is some risk of existing shareholders selling out after the record date, and then buying back in the SPP, the approach is not without risk as it may result in their holding being scaled if the SPP is heavily oversubscribed. We note that scaling of SPPs has been the subject of some recent media criticism, so promoting consistency across offers may help defuse any suggestion that an issuer has chosen to structure their offer in an “unfair way” when they are simply complying with the NZX Listing Rules.</td></tr>
<tr><td>10</td><td>Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?</td><td colspan="2">Yes, we agree that issues made under earlier SPPs should be able to be ratified. As per the drafting proposed, we agree that there should not be any voting restrictions that apply to a vote to ratify an SPP, given the offer under an SPP is effectively made to all shareholders on the same basis, other than any shareholders who are excluded from participation due to NZX Listing Rule 4.4.1(e).

Also in relation to ratification, we suggest that the calculation of placement capacity is amended so that where shares are ratified under a placement, a further 15% of the shares issued under that shareholder ratified placement are available for issue under the issuer’s placement capacity. This change would be consistent with the ASX Listing Rules, and also consistent with allowing 15% of shares issued under a shareholder approved capital raising under NZX Listing Rule 4.2.1 to be counted towards placement capacity (on the basis that shareholder approved issues should be treated equivalently once shareholder approval is obtained, regardless of whether it is obtained prior to or after the issue of such shares).</td></tr>
<tr><td rowspan="2">11</td><td>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):</td><td colspan="2">We have mixed views on the proposed amendments to disclosure as outlined below.</td></tr>
<tr><td>• Whether a joint lead manager (JLM) has been appointed
• If so, the name(s) of the JLM(s)</td><td>• Whether a joint lead manager (JLM) has been appointed
• If so, the name(s) of the JLM(s)</td><td>We agree these should be disclosed. We are aware that in certain cases investment banks have been reluctant to be named as underwriter or lead manager in investor materials due to a concern that it could give rise to heightened liability for them under US Securities Law in particular. We have not heard the same concern expressed where they are named in a legal compliance document, such as an ASX Appendix 3B. As such, we support disclosure of these details in the Corporate Action Notice for consistency across offers.</td></tr>
</table>

	Question	Comments	
	• The fees payable to the JLM(s)	• The fees payable to the JLM(s)	We agree these should be disclosed and the Corporate Action Notice is the appropriate place for it. NZX could usefully provide guidance to expressly confirm that only fees that relate to the capital raising need to be disclosed – for example, if the lead manager also has a mandate to act in other respects for the issuer (e.g. assisting with an acquisition or an ongoing retainer for assisting with financial modelling/investor relations, etc), that should not be captured.
	• Whether the issue will be underwritten • If applicable, the name(s) of the underwriter • The extent of the underwriting	• Whether the issue will be underwritten • If applicable, the name(s) of the underwriter • The extent of the underwriting	See above regarding disclosure of the JLMs.
	• The fees to be paid to the underwriters	• The fees to be paid to the underwriters	See above regarding disclosure of the JLMs' fees.

	Question	**Comments**	
	• Whether the issue will be sub-underwritten • If applicable, the name(s) of the sub-underwriters • The fees paid to the sub-underwriters	• Whether the issue will be sub-underwritten • The fees paid to the sub-underwriters	We strongly oppose mandatory disclosure in respect of any sub-underwriting arrangements. Issuers often do not have visibility as to sub-underwriting arrangements – the underwriting agreement will allow the underwriter to sub-underwrite the offer and the form of sub-underwriting agreement is often reviewed by the issuer's legal counsel. However, the issuer is not a direct party to the sub-underwriting arrangements and typically has no say in who sub-underwriters are. If the proposed requirements are introduced, the contractual position would need to change, which is likely to upset the commercial balance currently struck between issuers, underwriters and sub-underwriters, which may reduce the efficiency of capital raisings (e.g. sub-underwriters may seek to be paid higher "standard" fees if the fees are disclosed for all sub-underwriters, rather than having this negotiated separately and privately between the underwriter and the sub-underwriters, and issuers may seek to introduce limits on who can act as a sub-underwriter, all of which may it more difficult and costly to launch offers). We also note that the ASX Listing Rules do not require disclosure of sub-underwriters as we understand the contractual position is the same as it is in New Zealand.
	• The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated	• The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated	We don't have any objection to these circumstances being disclosed, but consider it is of limited value to shareholders. This is because underwriting arrangements are invariably able to be terminated on occurrence of a "material adverse event" – so providing further particulars as to specific termination events is of limited use, given there is always a (somewhat subjective/broad) ability for the underwriter to terminate the underwriting agreement on occurrence of such an event, regardless of the other specific termination events included in the underwriting agreement.
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):	We have mixed views on the proposed amendments to disclosure as outlined below.	

	Question	Comments
	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.	As noted above, we do not support introducing any requirements around the allocation of any shortfall. The intentions in respect of any shortfall allocation would typically be disclosed in the offer document, so we have no objection in principle with this being required.
	b) Scaling policies for SPPs, Rights issues and Accelerated Offers.	b) Scaling policies should already be disclosed via the offer document, so we have no objection in principle about requiring these to be disclosed so long as the form of them is not too heavily prescribed beyond the requirements of the rules.
	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 and details of any escrowed shares issued in the placement.	c) We have no objection in principle to requiring this disclosure.
	• 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 and whether Related Parties are eligible to participate in the placement.	We have no objection in principle about requiring these details to be disclosed. However, some complexity arises when issuers have existing shareholders and Related Parties in jurisdictions outside New Zealand – it is not a simple "Y/N" answer in that case, as it may be the case that institutional investors in certain jurisdictions are permitted to participate, but not retail shareholders from those jurisdictions. Some jurisdictions may be excluded entirely. We suggest this is addressed by including a footnote on the question regarding existing shareholders to the effect that "Issuers should answer Y if existing shareholders are eligible to participate even if their participation is subject to satisfaction of eligibility criteria applying to the placement generally, such as the offer only being made to investors in certain jurisdictions or with a certain status, such as wholesale, sophisticated or professional investors only". We suggest a similar footnote is included for participation by Related Parties to the effect that "Issuers should answer Y if there are no restrictions on participation by Related Parties as a result of their status as Related Parties (i.e. restrictions on participation applying to the placement generally should be disregarded)".

	Question	Comments
	• 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).	We have no objection in principle to requiring this disclosure.
	d) Reasons for selecting an ANREO structure.	We have no objection in principle to requiring this disclosure.
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.	We do not see any issue with this proposal.
14	NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.	We do not see any issue with this proposal, but equally query whether it will deliver much value to issuers given the fact specific nature of the considerations at hand, and very few issuers undertake capital raisings without the assistance of specialist advisors.
Part B: Listing Options		
1	**SPACs** 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?	Given the apparent lack of demand from promoters of SPAC listings, we consider that NZX should better focus its regulatory attention on other matters. If NZX is approached by SPAC promoters, it could look at investor protections/waivers/rulings that are appropriate to achieve policy considerations at the time on a case by case basis (given the wide discretion afforded to NZX under the NZX Listing Rules to approve listings). We expect that if there was sufficient demand, the terms would become settled and start to be issued on a class basis, before eventually being included in the NZX Listing Rules, much like the introduction of AREOs (originally offered through individual waivers, then class waivers and then finally incorporated into the NZX Listing Rules).

	Question	Comments
2	**Dual class shares** 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)?	As with the above, we suggest dual class share structures should be reviewed on a case by case basis.

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2 September 2022

Kristin Brandon
Head of Policy and Regulatory Affairs - NZX
Kristin.brandon@nzx.com; policy@nzx.com

Dear Kristin

Forsyth Barr submission on the NZX Capital Raising Settings and Listing Options – Targeted Review July 2022

1. Thank you for the opportunity to provide feedback on the proposed amendments to the NZX Listing Rules ("Listing Rules") and Corporate Action Notice, as summarised in the consultation paper dated 27 July 2022 ("Consultation Paper"). We outline our feedback below on each of the specific questions provided in the Consultation Paper as well as our general comments on the proposed changes.

2. We note you have indicated in the Consultation Paper that you may publish submissions. We are comfortable with our submission being published on the basis this is alongside all other submissions and is not partially published.

3. Defined terms in this submission carry the same meaning as in the Listing Rules. A reference to the "Listing Rules Exposure Draft" is to the NZX Listing Rules Exposure Draft published on 27 July 2022.

About Forsyth Barr

4. As you will be aware, Forsyth Barr Limited ("Forsyth Barr") is a New Zealand owned firm providing a full range of investment services including share-broking, portfolio management, research and investment banking. Forsyth Barr is an NZX Market Participant and it has been in business for over 85 years, with 24 offices throughout the country.

Feedback on proposed specific amendments

Question 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.

5. We are supportive of this proposed change to ensure fair outcomes for retail shareholders.

Question 2: Should NZX's rules allow ANREOs as a permitted pro rata offer with a 1:1 offer limit?

6. We do not support this proposed change.

7. We are of the view that ANREOs are an offer structure that should be used rarely and infrequently, primarily due to the fact that these offer structures have the potential to significantly dilute the shareholding of non-participating shareholders, even with a 1:1 offer limit (which we note can be an impractical limit depending on the circumstances).

While every effort has been made to obtain accuracy, no liability is accepted for any errors or for opinion expressed.

NZX Firm

8. In our view, an ANREO offer structure that has not been approved by shareholders should only take place where a waiver has been granted. We suggest that Issuers who wish to pursue an ANREO offer structure should continue to be required to apply to NZ RegCo for a waiver under rule 9.7 of the Listing Rules.

9. We suggest that the Listing Rules could prescribe what information Issuers need to provide when applying for such a waiver (which should also be required to be released through MAP, subject to rule 9.7.2 of the Listing Rules). In addition to providing sufficient detail concerning the offer, including any proposed offer limits, the Issuer should be required to provide the information stipulated at 4.4.2(c)(ii) of the Listing Rules Exposure Draft, namely:

    a. the reasons why the Issuer has chosen to make such an offer, and the reasons why the non-renounceable nature of the offer is in the best interests of the Issuer; and

    b. the impact of the non-Renounceable nature of the offer on non-participating holders of Equity Securities.

10. Should NZ RegCo be satisfied that such an offer is justified in light of the above, a waiver could be granted. Waivers could continue to be granted for ANREOs in which the number of shares offered exceeds a 1:1 offer limit (which may be suitable and practical given the particular circumstances), noting of course that NZ RegCo would need to be satisfied that such an offer is justified in light of the above.

11. Further to the above, NZX should consider ways in which NZ RegCo can be empowered and encouraged to investigate offers that are prima facie renounceable offers, to ensure that they are also renounceable in substance. In our view a prima facie renounceable offer that is in substance non-renounceable should also require a waiver. We suggest that guidance should also be considered on this topic.

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

12. In our view this is a sensible amendment to the Listing Rules. We are supportive of this change.

13. Further to [11] above, we note that this requirement will likely contribute to reducing the number of offers that are prima facie renounceable but are in substance non-renounceable.

Question 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?

14. In our view the current requirements in this respect are outdated. The suggested amendments are pragmatic and we support these.

15. We agree that this should also be permitted for SPPs.

Question 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 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 securities they have applied for in excess of their entitlement under the pro rata issue.

16. We do not support this proposed change.

17. In our view any shortfall allocation policy should be at the discretion of the Board of the Issuer given the Board is taking the risk in making the offer. A Board should be entitled to allocate a shortfall in the manner that best suits the particular circumstances of the offer and what the Board considers to be in the best interests of the Issuer. By way of example, a Board of an Issuer may consider that introducing new investors or a strategic investor onto the register through a shortfall bookbuild is in the best interests of that Issuer. Additionally:

    a. Restricting the ability of Issuers to allocate shortfall at their discretion may discourage those Issuers from proceeding with a pro rata offer;

    b. The ability of Issuers to access underwriting for such offers may be negatively impacted (as the risk profile of such offers could be increased due to less shortfall allocation flexibility), and underwriting costs associated with such offers could increase;

    c. It is not clear how the proposed change will apply to an offer that has different legs (e.g. an institutional offer and a retail offer); and

    d. We assume that this proposed change is aimed at addressing poor behaviour demonstrated by Issuers regarding shortfall allocations. In our view a more targeted approach would be preferable, as opposed to the proposed change.

18. In justifying what we say at [17], we are supportive of the proposed required disclosure of shortfall allocation policies. Where Issuers have not allocated a shortfall on a pro-rata basis, we are supportive of a disclosure requirement whereby the Issuer must disclose the reasons why a non pro-rata shortfall allocation policy was used (such a disclosure requirement could be incorporated into the Listing Rules by amending the wording provided at r 4.3.1(a)(iv) of the Listing Rules Exposure Draft). This could support a targeted approach to reducing undesirable behaviour as described above at [17](d).

Question 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?

19. We are supportive of this change.

Question 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?

20. We are supportive of this change.

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

21. We are supportive of this change.

22. As noted in the Consultation Paper, 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. In our view this is positive.

Question 9: Should we only allow the scaling of oversubscriptions 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?

23. We are supportive of this change.

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

24. We are supportive of this change.

Question 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 JLMs*
- *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.*

25. We are supportive of the proposal to require disclosure of the following:

    a. the fact of the appointment of any entities with formal roles in an offer and the names of those parties;

    b. the fact that an offer will be underwritten and the fact of the appointment of any underwriter, and the names of those underwriters; and

    c. a summary of significant events / material circumstances that could lead to the underwriting being terminated as we consider termination is likely to be a materially price sensitive event and shareholders should be aware of what could cause termination to occur.

26. We note that a requirement to disclose the information described at [25](a) and (b) above would align the Listing Rules with what is generally already happening in practice.

27. We are not supportive of required disclosure of the other matters outlined. In particular, we are not supportive of a requirement to disclose:

    a. any fees payable to parties with a formal role in an offer, including JLMs, Underwriters, and sub-underwriters;

b. the extent of any underwriting;

c. the fact of any sub-underwriting; and

d. names of any sub-underwriters, and the extent of any sub-underwriting.

28. In our view any decision to disclose the information referred to at [27] should rest with the Board of the Issuer and the Underwriter. Such information could be commercially sensitive and the requirement to disclose such information could reduce the availability of underwriting / sub-underwriting. Further, this requirement could negatively impact the ability for listed issuers to raise capital on the NZX. In light of this in our view there is no clear justification to require such disclosure.

Question 12: NZX seeks feedback on whether to require disclosure on 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 [5] above, within the offer document for a pro rata issue.

b) Scaling policies for SPPs, Rights issues and Accelerated Offers.

c) Placements - to disclose:

o 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.

o 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.

o 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.

29. We have provided our feedback on question 12(a) at [18] above.

30. We are supportive of the proposal to disclose scaling policies for SPPs, Rights issues and Accelerated Offers pursuant to question 12(b). We expect that most Issuers will have policies in this regard.

31. With respect to the proposed increased disclosure requirements for Placements specified at question 12(c):

    a. we are supportive of:

        i. a requirement to disclose details of the offer, including the purpose of the placement;

ii. a requirement to disclose whether Related Parties are eligible to participate in the placement and details of any escrowed shares issued in the placement; and

iii. a requirement to disclose whether existing shareholders will be entitled to participate in the offer, and if so, on what basis.

b. we are not supportive of:

i. a requirement to disclose the reason for conducting a placement rather than a pro rata rights issue or an SPP. The Board of the Issuer (with whom the risk of any proposed offer sits) has the discretion to select a placement rather than a pro-rata rights issue and will be accountable for their decision without the formal requirement to explain one type of offer structure vs another.

Rule 4.5 of the Listing Rules (Placements) have been drafted to ensure the interests of existing shareholders are appropriately protected. In our view, these rules are working well. Additionally, in making any decision to conduct an offer by way of placement, Directors of course have duties under the Companies Act 1993, including a duty to ensure they are acting in good faith and in the best interests of the company.

In our view the proposed disclosure requirement imposes an unnecessary burden on Issuers which is disproportionate to the potential benefit investors receive from the increased disclosure (which in our view is very low).

It follows that Directors might then be required to disclose why they chose to have the offer underwritten or not, why they chose the parties involved, why they chose the timing they did and so forth;

ii. a requirement for the Issuer to disclose details of the approach it took in identifying investors to participate in the placement and how it determined their allocations. Consistent with feedback provided above, in our view such a requirement is disproportionately burdensome to Issuers as compared to the potential benefit of the increased disclosure to any investors. Further, in our view such a requirement could add an unnecessary barrier to raising capital on the NZX by way of a placement.

32. We are supportive of a requirement for Issuers to disclose their reasons for selecting an ANREO (question 12(d)), however we think such a requirement should be imposed in the way we have suggested at [8] – [11] above.

Question 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.

33. We do not support this proposal. We query the value NZ RegCo would derive from being able to access such information. Such information is as between the Board of the Issuer and any relevant JLMs / Underwriters.

34. Additionally, the disclosure of such information by an Issuer to NZ RegCo has confidentiality ramifications – this information will be private information the disclosure of which would

require the consent of the relevant persons who were or were not allocated Equity Securities (as applicable).

35. In our view a mechanism for NZ RegCo to request such information is unnecessary and would impose an undue regulatory burden. This may discourage Issuers from raising capital on the NZX by way of a placement. Such an outcome would be undesirable given the recent prevalence of placements (with SPPs) in New Zealand from 1 January 2020 to 31 March 2022 as noted in the Consultation Paper.

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

36. If NZX wishes to publish additional information and guidance to assist Issuers with their considerations in relation to capital raising then we encourage it to do so, however we encourage NZX to ensure that such guidance is concise and consistent with previous guidance already published.

37. We note the following comment in the Consultation Paper: "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." That comment and the paragraph it is made in are disappointing. More balance is needed to acknowledge the significant value often delivered to Issuers and existing shareholders through the advice and expertise of external advisers. The particular concern also needs to be explained in more detail.

38. In our view, external advisers can bring impartiality to corporate decision making. In particular, as the paragraph referred to noted, the Board is required to act in the best interests of the company. That is not always the same thing as acting in the best interests of existing shareholders, and there will be range of external factors to consider. External advisers may often be better placed to advise on those matters. It is important that the role of external advisers is not undervalued or undermined through comments like this in a consultation paper which, if left unchecked, can easily flow through to guidance. We would urge that more care is taken to present a balanced view.

Feedback sought - SPACs

Question 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?

39. In our view we are unlikely to see demand from promoters of SPAC listings in the NZ market to grow.

40. Should demand for SPAC listings increase, in our view the Listing Rules will generally provide sufficient investor protections. For a SPAC to be successfully listed pursuant to r 1.11.1 of the Listing Rules, the promoter of the SPAC should be required to demonstrate and provide:

    a. the purpose of the listing and detail regarding the operating companies that the SPAC intends to acquire participation in;

    b. a credible reason for the listing; and

c. appropriate timeframes by which investment by the SPAC into operating companies will take place.

41. Should NZX allow the listing this should be subject to particular conditions (including for example a condition to meet particular timeframes by which the SPAC must have invested into the relevant operating companies etc.).

42. In our view NZX needs to ensure that only quality companies capable of meeting relevant listing requirements should be afforded the opportunity to list on the NZX through a SPAC listing, to preserve the good reputation of the NZX.

Feedback sought – Dual class shares

Question 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?

43. We have no objection to NZX considering the introduction of a specific regime for dual class share structures. In our view we are unlikely to see interest in such structures grow in New Zealand.

Question 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)?

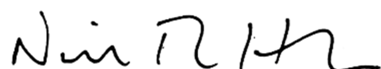
44. In our view the Listing Rules will generally provide sufficient investor protections. Particular disclosure requirements will need to be considered to ensure the market is well aware of any dual class structures.

Final comments

45. In conclusion, in our view the Listing Rules are generally fit-for-purpose. Where amendments are proposed to the Listing Rules, those amendments should, in general, ease unnecessary regulatory burden for listed issuers. Where authority is taken away from the Boards of listed issuers, by a regulator, this will amount to a further reason not to be listed. We encourage NZX to keep these points front of mind.

46. Thank you once again for the opportunity to provide feedback. Please contact us if you have any questions regarding this submission.

Yours sincerely
Forsyth Barr Limited



Neil Paviour-Smith
Managing Director

FW: NZX Corporate Governance Code Review Verbal Subs Minutes

Daniel Wong <daniel@flackswong.co.nz>
Fri 9/23/2022 2:22 PM
To: Kristin Brandon <kristin.brandon@nzx.com>
Cc: Jasveet Sandhu <jasveet.sandhu@nzx.com>;Katie Green <katie.green@flackswong.co.nz>;Rebecca Caird <Rebecca.Caird@flackswong.co.nz>

F&W oral submissions to NZX Policy team (September 2022).docx;

Hi Kristin

On the capital raising settings review, I'd like to submit on question 3 re a "liquidity event" for a renounceable structure. Again, NZX Policy should be mindful of smaller listed issuers and imposing additional unnecessary complexity and cost. For smaller listed issuers, it's hard to imagine a shortfall bookbuild generating any real value. Likewise, I expect that there will be very light trading in quoted rights for listed issuers (given there's a widely accepted, lack of liquidity in smaller and even mid-cap issuers for quoted shares). Before imposing any such "liquidity event" requirements, it would be helpful for empirical evidence to be gathered and analysed to ascertain the value, if any, obtained for shareholders from such liquidity events. For example, I'm told that there was extremely light trading in Cannasouth's recent quoted rights – to the extent that the broker suggested it not worthwhile for our current small cap issuer planning a rights issue. Would this be better as a CGC requirement? Or perhaps only for larger NZX issuers?

Regards

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Director

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Flacks & Wong Limited
This email, including any attachments, is confidential and may be subject to legal privilege. If you are not the intended recipient, please notify us immediately and delete this email from your system. Thank you.

From: Daniel Wong
Sent: Tuesday, 13 September 2022 3:55 pm
To: Jasveet Sandhu <jasveet.sandhu@nzx.com>
Cc: Kristin Brandon <kristin.brandon@nzx.com>
Subject: RE: NZX Corporate Governance Code Review Verbal Subs Minutes

Hi Jasveet

Please see attached.

Regards

Daniel

From: Jasveet Sandhu <jasveet.sandhu@nzx.com>
Sent: Tuesday, 13 September 2022 1:35 pm
To: Daniel Wong <daniel@flackswong.co.nz>
Cc: Kristin Brandon <kristin.brandon@nzx.com>
Subject: NZX Corporate Governance Code Review Verbal Subs Minutes

Hi Daniel,

Thank you for providing us with your verbal submissions the other day, please find attached the minutes of your submission for your review.

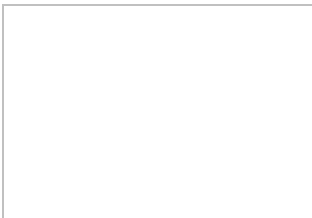
Should you have any edits that you would like to make, we would be grateful if you could please leave the changes as tracked and send a copy back to us.

Alternatively, if you are satisfied with the minutes, could you please respond to this email with "confirmed" and we will take the minutes as finalised.

Thank you.

Kind regards,

Jazz



Jasveet Sandhu

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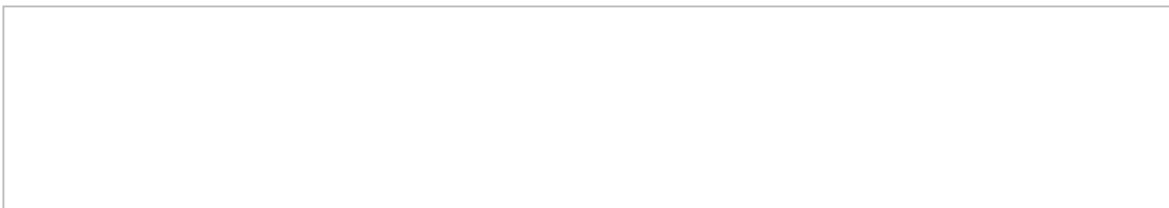

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Institute of Finance Professionals New Zealand Inc.

5 September 2022

Kristin Brandon,

Head of Policy and Regulatory Affairs,

NZX Ltd

By Email: policy@nzx.com

Consultation – Targeted Review and Public Consultation of NZX Capital Raising Settings

Dear Kristin.

Thank you for the opportunity to provide the NZX with feedback on this matter.

We firstly acknowledge that the eventual outcome of this review requires a difficult *balance* between the competing interests of the varying stakeholder classes. Additionally we advocate that the capital raising policy settings chosen by the NZX be (in descending order):

1. **Principles base**d - wherever possible;
2. ***Preferentially* favorable to *existing* shareholders** – except in certain *very limited* and *defined* circumstances and be waiver dependent;
3. **Outcomes orientated**;
4. **Timely and use disclosure (transparency)** as a policy approach to address issues of perceived "Fairness" rather than prescription**;** [1]
5. Reflective of the policy that economic efficiency is a *conditional* objective – to shareholder equity (fairness);
6. Conditional on **shareholder approval** where they reach either a price dilution or size threshold;
7. More explicit around its expectations in this area – through provision of Guidance.

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[1] And thus consistent with the Continuous Disclosure obligations.

We also acknowledge that: **(a)** The risk calculus in the directors' choice of a capital raising structure [2] is both dynamic and time sensitive; **(b)** These restrictions may be less economically efficient and impose incremental economic friction costs on a company; (**c)** These capital raising events are infrequent and are often concentrated around times of economic and market stress; and **(d)** There are existing solutions already available to directors that don't appear to have been used – like partial underwrites or deeply discounted, but pro-rata, renounceable offers that are not underwritten.

Recommendations

Our recommendations are primarily disclosure / transparency orientated and non-technical in nature.

1. That companies be required to have, and disclose their Capital Raising Policy settings.

2. That a company's directors should be obligated to disclose the rationale behind any divergence from undertaking a *pro-rata*, non- renounceable offer ***at the time of the offer***.

3. A key decision taken by directors is the **proportion** of the capital raised that will be placed. We suggest that the retail offer must be large enough to ensure that for all retail shareholders who wish to participate their shareholding will not be *unnecessarily* diluted. The $30,000 cap on individual retail shareholder's participation is thus arbitrary, unfair, and should thus be removed. [**Note** : We observe that there appears to be a tendency to maximize the placement size at the expense of the retail raise.]

4. The limit on placements to 15% of the market capitalization in any year is a blunt instrument. Any placement at a deep discount should require shareholder approval unless a company is in significant stress, requires urgent capital and that the Directors of a company disclose their rationale to deviate from their Capital Raising Policy (as proposed in 1).

5. While the NZX's Rules do not place restrictions on the price at which securities can be issued, we recommend that size restrictions [3] be removed on all forms of capital raises **where they are done at a 1.5% discount or lesser** to the market price (1-month VWAP).

6. That **NZX** provide explicit Guidance (disclosure) on:

    a) The **probability** of achieving a waiver for a non pro rata, non-renounceable offers without a liquidity event.

    b) The **parameters** where a Waiver is likely to be obtained for non-renounceable offers and other capital raising structures where existing shareholders are disadvantaged

[2] Being Placement, Share Purchase Plan, Accelerated Non-renounceable Equity Offering.

[3] Noting that the Takeovers Code restricts a shareholder holding more that 19.9% of a company's equity capital without a takeover bid or shareholder approval.

c) The timeliness of any disclosures.

d) What standard safe harbors' around non-renounceable offers may look like.

e) The choice in the trade-off in wealth transfer between obtaining a fully Underwritten Offer and the dilution from a deeply discounted offer.

7. The participation of custodian account holders in placements enables the managers of the custodian accounts to potentially game the system for custodian accounts to participate twice in an offer. Custodians should be required to disclose the identities of their custodian accounts at the record date, so those participating in the placement do not get to double dip.

8. That harmonization of the listing rules with the ASX while *desirable*, should **not** be considered to be an absolute imperative. We are less concerned about the risk of regulatory arbitrage with the ASX.

9. Capital raising structures (like ANREOs) that cause wealth transfer should **only** be allowed by NZX waiver in limited circumstances (say 5% or 2 standard deviations of waiver requests). We see these exemptions being around unexpected, time sensitive "extremis" events where working capital is required to protect a company's going concern status (analogous to the class exemption waiver for Covid).

10. The "allowance by waiver" exception would negate the requirements for added investor "protections" around non-equitable capital raising structures.

11. Given the underlying issue for directors' is the trade-off been time, certainty, and risk, that the NZX consult around how the procedural elements around capital raises may be meaningfully shortened.

We thus agree with the introduction of proposed requirements:

12. That dilutionary capital raising structures provide liquidity events.

13. That the allocation policy for scaling from **oversubscription** 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.

14. That the offer of the **shortfall** must be made to them on a pro-rata basis, having regards to both the size of their existing holdings on the record date for the pro rata issue and duration of ownership prior to the record date, and the number of the securities they have applied for in excess of their entitlement under the pro-rata issue.

15. For increased disclosure of underwriting (but **not sub-underwriting**) arrangements through corporate action notices.

Part B Responses

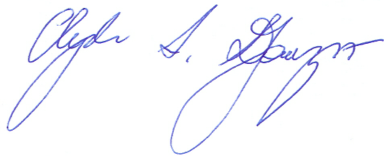
We see no immediate requirements for either:

1. SPACs; or .
2. The introduction of dual class share structures;

but note that these proposals could be reviewed again at some future date if warranted.

Finally, the Advocacy Committee would welcome further opportunities to engage with the NZX on a scheduled, periodic basis.

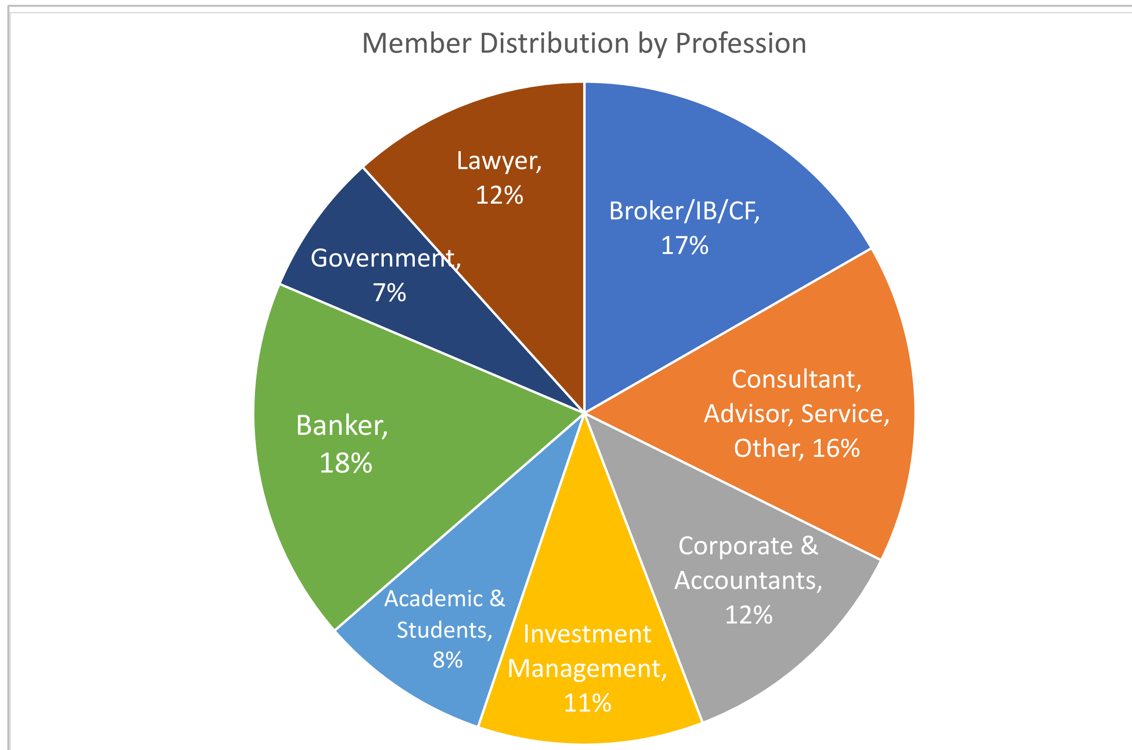
Yours sincerely,



Clyde S. D'Souza
Director – INFINZ

About INFINZ

The Institute of Finance Professionals New Zealand Incorporated ("INFINZ") is a voluntary, member-based organisation formed in 2002 through a merger of the Society of Investment Analysts and the New Zealand Society Corporate Treasurers. As at the 24 August 2022, its membership base totalled 1,987 distributed across a variety of financial professionals in the following manner.



INFINZ's objectives are to promote the quality and standing of both the financial services eco-system, its participants and to represent and advocate on behalf of its members to legislators, regulators and policy makers, government, and other professional/industry bodies. We note that despite the diversity in our membership base. The objectives of INFINZ as stated in its constitution include:

1. To promote quality, expertise, and integrity in the New Zealand financial and capital markets.
2. To promote the proper control and regulation of the New Zealand financial and capital markets.
3. To work to ensure the New Zealand financial and capital markets are relevant, efficient, and generally to add value to the operation of the New Zealand financial and capital markets.
4. To act as an advocate for its members wherever necessary to support and promote the objects.

Feedback for Proposed Specific Amendments

1. Should we introduce downside price protection for retail shareholders where there are different components or legs of an offer?

   Yes, we agree noting that there needs to be internal consistency between the varying types of capital raise types.

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? In principle

   In principle no, not without other "mitigations". The issue here is the size of the 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?

   Yes

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?

   No view

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?

   Yes

   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.

   Yes

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?

Yes

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?

   Refer Recommendation 3

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?

   Refer Recommendation 10

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?

   Yes. This ensures existing shareholders retain a preferred status.

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

    Yes

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) as
    - 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

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.

    No additional comment.

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

    Yes. We see that smaller companies in particular would benefit from enhanced guidance

Submission by Jarden Securities Limited to NZX Capital Raising Settings and Listing Options Targeted Review

3 September 2022

Please contact Henry Chung (Henry.Chung@jarden.co.nz or +64 21 900 719) in respect of this submission.

	Question	Comments
Part A: NZX Capital Raising Settings		
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?	Yes - allowing downside protection mechanisms as an **option** for issuers and the ability to differentially price different components of a rights offer removes a key potential differentiator between placement/SPP and AREO structures. Under an AREO, the price/discount of the offer needs to appear attractive for investors through to settlement of the retail component. To accommodate for the market risk of this ~1 month time period, to attract investor and underwriter support, the discount needs to be wider than a comparative placement & SPP structure that includes a downside pricing protection mechanism. A downside pricing mechanism for the retail component of an AREO may assist in lowering the required launch discount of the rights issue and improve the ability to underwrite the retail component of an AREO (which is typically a least attractive option for potential investors to participate in an equity raising). Downside pricing protection should be an option for issuers and not be required in all cases where there are different components of an offer. Some issuers are more sensitive regarding the price that new shares are issued at (e.g. listed property vehicles who target NTA per share +) and a requirement to incorporate downside pricing protection for AREOs may make such a structure less attractive for such issuers.
2.	Noting that: • ASX permits the use of ANREOs provided dilution limits are in place;	Yes – ANREOs are important to have as a potential offer structure in certain scenarios – namely if there are major shareholders who may or may not be participating, and/or in the context of distressed/recapitalisation raisings where other offer structures are unlikely to attract new investor support.

	• 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?	An ANREO may be appropriate where: • Some form of rights offer is required if the 15% placement threshold is not sufficient from a sizing perspective; • An accelerated timetable is required due to the composition of the share register, funding certainty and/or market volatility. This requirement for an accelerated timetable also means a shareholder vote cannot be used to increase placement capacity; • Sub-underwriting interest is likely to be low in a renounceable rights offer given lack of liquidity of the company, the expectation that there will be limited take up from existing shareholders or market volatility; • Major/large shareholders are not expected to participate (or do not participate on a pro rata basis); • A large shortfall is expected meaning rights trading or a shortfall bookbuild would result in downward share price pressure to the offer price. Where a shortfall bookbuild is offered and a large shortfall is known, buyers will sit out of the market during the offer period causing downward pressure to trading price. Similarly, if rights trading is offered, a large known shortfall causes the share price to trade down to the offer price with little to no value in the rights as market liquidity gets heavily weighted to the sellside. Further, if the share price trades under the office price, the underwriter(s) and/or sub-underwriters will immediately short their position which is particularly negative for shareholder value for existing holders. These circumstances are particularly present in recapitalisations where a failure to successfully execute the equity raising may lead to a breach of banking covenants / insolvency. ANREOs are specifically allowed under the ASX Listing Rules and 56 companies listed on the NZX are dual listed on the ASX – this is nearly half of all NZX listed companies. Any regulatory impediments to potentially raising capital on the NZX vs the ASX needs to be strongly justified or companies will consider moving their primary listings to ASX or solely list on ASX if that stock exchange is viewed as providing greater optionality for companies in respect of recapitalising. This also applies to many of the areas where changes are being considered – if certain new rules or disclosures can potentially make the discount for raising needing to be wider due to being NZX primary listed, then companies will consider shifting their primary listing or solely listing on ASX.
3.	Should NZX require a "liquidity event" in the form of either (or both) a	No. As noted above, a "liquidity event" in certain rights offer structures can result in significant downward pressure on the share price to the offer price (meaning that there is little to no real value in the rights in any

	shortfall bookbuild or rights quotation for a renounceable structure?	event) where a significant shortfall is likely and rights trading or a shortfall bookbuild is incorporated in the structure. The majority of equity raisings that have not had a "liquidity event" in the renounceable structure have been due to financial distress of the issuer and sub-underwriters have only participated in the equity raising on a financial risk basis as they are looking through to receiving shares at the end of the process – i.e. they are not hedge funds that would have participated on the basis of a fee for the risk. Had there been a "liquidity event" in these distressed raisings, then the sub-underwriters would not have participated in that function and taken balance sheet risk through the offer period but rather would have just sought to participate in a shortfall bookbuild (a "free option"). This means that the equity raising would not have been underwritten and may have not launched – i.e. the bank may not have been supportive of providing the necessary debt waiver packages without the certainty of the equity raising completing.
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?	Yes, the mismatch depending on offer structure (traditional vs accelerated) should be aligned and the required notice period should be removed. This notice period has extended the traditional rights offer timetable which means that the discount needs to be wider and underwriting costs higher to accommodate this period of market risk. As seen through accelerated offers, the notice period presents little benefit to existing shareholders. Yes, this should also be permitted for SPPs to remove any mismatches between offer structures. On the point of timing, NZX should reconsider the minimum offer period requirement for rights offers – allowing 5 business days is sufficient for online application processes (investors have become familiar with needing act quickly and as an example, participation across mass retail into one day placements is now common place). The majority of proceeds in a retail offer period coming in on the penultimate and last day of the offer period as investors appreciate time value of money.
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?	No, this does not take into account any objectives of an issuer, practical constraints and allows for trading strategies which puts downward pressure on share prices during offer periods 1) Existing shareholders have already been treated fairly in pro rata offers and while they are often invited to apply for more of their entitlement this does not take into account the objectives of the issuer which may be to further diversify its share register for benefits such as increasing liquidity or introducing new shareholders which can support future equity raisings.

	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.	2) If existing shareholders receive a priority in allocation for shortfalls then they can seek to make a trading profit by selling their existing shares after the record date of the offer and then apply for their entitlement + an oversubscription (particularly as it is suggested that the shortfall is allocated on a pro rata basis determined by the record date holding or the number of securities they have applied for). This trading strategy would be widely adopted by retail and institutional investors meaning that there would be significant downward pressure on the share price to the offer price during the offer period as there will be material sell side volumes from existing shareholders who have a priority in receiving shares via the bookbuild. This would mean that offer discounts would need to be wider to assist in offsetting this trading impact on the price post launch. 3) There is also the practical constraint of how this would be implemented with existing shareholders (particularly retail shareholders) in a price/volume bookbuild. In an AREO, can only institutional investors participate in the institutional shortfall and likewise only retail investors in the retail shortfall? This would create potentially vast value differences in the rights between the bookbuilds and practically it would be impossible to allow all shareholders the opportunity to bid in the institutional shortfall bookbuild. In current oversubscription mechanics in retail offers, the demand is presented in the bookbuild at the strike price (as opposed to being able to show pricing sensitivity due to the complexities and potential confusion amongst retail shareholders in being able to do so) and to avoid perverse outcomes the final price of the bookbuild in these offer structures is typically capped at the last close prior to the bookbuild which is a cap on the value that renouncing shareholders can receive. 4) This requirement would make it unattractive for underwriters/sub-underwriters to provide balance sheet commitments with less line on sight on receiving securities which will impact certainty of funds for issuers, and result in the need for wider discounts on offers to attract underwriting support and higher underwriting costs on the issuer.
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?	Yes. Market structures have evolved with $50,000 becoming common place and well expected in SPPs. In appropriately sized SPPs, it can usually lead to greater than pro rata allocation for a significant proportion of retail shareholders should they apply for this vs an equivalent pro rata raising. It also more retail friendly from an application point of view – many investors prefer to round their application size (e.g. to $20,000 SPP application vs $19,678 of rights). Recent examples where the increased cap has allowed for pro rata or greater outcomes for the majority of shareholders include:

- $75m SPP which was more than 3x oversubscribed, 99.6% of applicant shareholders received greater than pro rata or 100% of their application (to a maximum of $50,000). 71% of applicants received final allocations which were more than their equivalent pro rata allocations under the SPP vs an equivalent rights offer structure
- $20m SPP which was 2.5x oversubscribed, 96.2% of applicant shareholders received greater than pro rata or 100% of their application (to a maximum of $50,000). 66% of applicants received final allocations which were more than their equivalent pro rata allocations under the SPP vs an equivalent rights offer structure

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?	Yes. As noted above, SPPs can be effective and retail investor friendly option or raising capital. We comment on the proposed enhanced disclosure requirements below.
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?	No – in certain circumstances it is appropriate for issuers to have a fixed price for the SPP which is no greater than the placement price. For example, listed property vehicles typically target raising above NTA per share – a downside price protection in an SPP would bring in risk of raising below NTA per share which they may not be willing to do as it would be dilutive for shareholders.
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?	No – this should be at issuer discretion as they will understand the nature of the offer and registry and be able to make a decision on the fairest approach. Requiring scaling to the record date can encourage a trading strategy whereby an existing shareholder sells their existing shares after the record date and then participates in the equity raising – this creates a downward pressure on the share price due to the function of the market and offer vs due to fundamental valuation. To discourage such a trading strategy and short term profit making, scaling by reference to the close date may be more appropriate.

<table>
<tr><td>10.</td><td>Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?</td><td colspan="2">Yes, we see no reason why an SPP should not be permitted to be ratified like a placement.</td></tr>
<tr><td>11.</td><td>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</td><td colspan="2">We comment below on each of the proposed areas of enhanced disclosure. As a general principle, we discourage any requirement for additional mandatory inclusions of disclosure items in the corporate action notice as this will only add to the costs incurred by an issuer as part of an equity raising with potentially no benefit to investors. Of the suite of announcements made on offer launch, investors focus on the investor presentation and then the investor announcement and offer document (if applicable). The corporate action notice is likely to have the least amount of focus from investors so should not contain any material information which is relevant to all investors (e.g. whether the offer is underwritten or not). Any information deemed material should be included in the investor presentation or offer document which is well read and not buried into the corporate action notice which is considered more of a mechanical disclosure document for logistics purposes. Adding further disclosures to the corporate action notice will likely just increase duplication of information and legal costs to the issuer as external counsel are typically instructed to prepare this filing.

<table>
<tr><td>Whether a joint lead manager (JLM) has been appointed
If so, the name(s) of the JLM(s)</td><td>If appointed, this is usually already disclosed in the investor presentation and the offer document directory (if a rights offer or SPP)</td></tr>
<tr><td>The fees payable to the JLM(s)</td><td>If material, the transaction costs would be disclosed as part of a sources and uses disclosures in the investor presentation. If disclosure of the fees is made mandatory then it should be limited to the fees payable directly in respect of the equity raising as if the use of proceeds is to fund an acquisition then there may be investment banking fees payable to a JLM which is for separate advisory services</td></tr>
<tr><td>Whether the issue will be underwritten
If applicable, the name(s) of the underwriter</td><td>If underwritten, this is usually material information in the context of an offer and disclosed in the investor presentation and the offer document directory (if a rights offer or SPP)</td></tr>
</table></td></tr>
</table>

arrangements may be amended or terminated	• The extent of the underwriting	
	• The fees to be paid to the underwriters	As noted above, if material, the transaction costs would be disclosed as part of a sources and uses disclosures in the investor presentation. If disclosure of the fees is made mandatory then it should be limited to the fees payable directly in respect of the equity raising as if the use of proceeds is to fund an acquisition then there may be investment banking fees payable to the underwriter which is for separate advisory services
	• Whether the issue will be sub-underwritten • The fees paid to the sub-underwriters	We strongly oppose mandatory disclosure in respect of any sub-underwriting arrangements. Sub-underwriting allows an underwriter to manage its risk position in relation to an offer. The availability of sub-underwriting support (where relevant) impacts the pricing and general success of an offer. Introducing a requirement to disclose the identity of, and fees paid to, sub-underwriters would be impractical and would act to reduce sub-underwriting support. We note that ASX does not require this level of disclosure. Sub-underwriting fees are borne by the underwriter rather than the issuer and sub-underwriting arrangements are typically entered into independently of the issuer and the issuer is commonly not aware of the identities of the parties involved in sub-underwriting. The sub-underwriting fees payable may also vary across sub-underwriters depending on timeframe of risk and structure of the sub-underwriting (e.g. if there is a tiered waterfall of allocations in a shortfall). Requiring disclosure of sub-underwriting fees will mean that underwriting fees will need

	to increase to offset the commercial reality that all sub-underwriters will expect to be paid the same quantum (the highest sub-underwriting fee) – this will increase the underwriting costs to issuers. Sub-underwriting support can be obtained at different points during an offer (i.e. it is not always obtained prior to an offer launching). This would result in disclosure becoming outdated (and we do not consider that it would be appropriate for issuers to be required to make subsequent disclosure to update for this). The sub-underwriting position of an underwriter can evolve through the offer period on a daily basis. There is a limited pool of sub-underwriters in New Zealand and includes institutional funds to high net worth individuals who would not wish their identities to be disclosed – including to an issuer. The identities of participants in equity raisings (unless required through SPH or D&O disclosures) is always anonymous and any mandatory disclosure requirement will reduce the already limited pool of sub-underwriters which will impact the ability of NZX companies to raise equity via underwritten offers. In some cases, it might mean that NZX companies (particularly those with low liquidity) will never be able to undertake a fully underwritten equity raising. In other cases, it will mean that the pool of sub-underwriters becomes smaller and such decrease in an already limited pool will drive higher underwriting costs.
• The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated	The material circumstances in which underwriting arrangements may be amended or terminated are often already disclosed as part of the offer. Given sub-underwriting arrangements are typically entered into independently of the issuer and may be done so at different

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			points in the offer process (as mentioned above), we are also of the view that it is not appropriate to require disclosure of the material circumstances in which sub-underwriting arrangements may be terminated. This would be particularly onerous for an issuer where there are a large number of sub-underwriters and sub-underwriting arrangements have been individually negotiated.
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	As noted above, adding further disclosure requirements to the corporate action notice will likely just increase duplication of information and legal costs to the issuer as external counsel are typically instructed to prepare this filing of a document that is not a focus for investors. Accordingly, we do not believe additional mandatory disclosures should be included in the corporate action notice as if they are material information for investors should be disclosed in the investor presentation or offer document.		
		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.	The intentions in respect of any shortfall allocation would already be typically disclosed in the offer document.
		b) Scaling policies for SPPs, Rights issues and Accelerated Offers.	Scaling policies would be expected to already be disclosed via the offer document.
		c) Placements - to disclose: • details of the offer in a Corporate Action	Details of who can participate in the placement are typically already disclosed in the investor presentation/announcement.

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

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

A requirement to disclose matters such as how investors were identified and the allocation process **post raising** does not assist investors in their in making their investment decision whether or not to participate. If such factors are considered material by issuers then they should be disclosed in the investor presentation. Thus this proposal increases the administrative/legal costs associated with the offer with limited benefit for investors.

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No.	Question	Response
	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.	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. — Should the issuer wish to provide justification for its selection of offer structure then it should have the discretion to do so in the investor presentation / announcement
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.	While we do not oppose providing NZ RegCo with an allocation schedule, we are uncertain as to what NZ RegCo would do with this information (i.e what the benefit to the market would be while introducing a risk of potential loss of confidentiality in respect of investors in a process) and NZ RegCo's ability to appropriately interpret the allocation schedule in isolation – i.e. with no further background as to how the bookbuild has evolved and a detailed understanding of who the underlying investors are (e.g. whether they are long only institutions with a history with the company or deep engagement through the equity raising process, or are hedge funds, or are strategically relevant to the company). As any such process will be liaised via legal counsel, any engagement on the allocation schedule will increase the legal costs to an issuer.
14.	NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.	We do not comment on this item aside from that we caution any issuer relying on generalised advice given every equity raising will have its own unique characteristics. We encourage NZX to provide a guideline that in all rights offers where rights are trading, each right should represent one share. It is highly unusual and confusing in situations where this is not the case (e.g. one right represents two new shares).
Part B: Listing Options		
1.	**SPACs** NZX has not seen strong demand from promoters of SPAC listings.	Given that there has been limited interest in SPAC listings, we do not believe that NZX should attempt to introduce general rules/investor protections but should review each SPAC listing application on an ad hoc

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?	basis. The NZ market is very different to the US and thus attempting to introduce specific Nasdaq or NYSE requirements in a general NZ sense may not be appropriate.
Dual class shares 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)?	Similar to the above comment, given the limited depth of the NZ capital market, any proposed regime for dual class share structures should be reviewed on a case by case basis rather than attempting to introduce a regime from an international market which may be not be directly applicable to NZ.

Russell McVeagh

Submission by Russell McVeagh to NZX Capital Raising Settings and Listing Options Targeted Review

12 September 2022

Introduction

1. Set out below are our submission on the consultation paper entitled 'Capital Raising Settings and Listing Options – Targeted Review' issued by NZX Limited ("**NZX**") on 27 July 2022 ("**Consultation Paper**"), which included proposed amendments to the NZX Listing Rules ("**Listing Rules**") and Corporate Action Notice form ("**Corporate Action Notice**").

2. Unless otherwise defined in this letter capitalised terms will have the meaning given to them in the Consultation Paper, Listing Rules and Corporate Action Notice, as applicable.

Please contact David Raudkivi (david.raudkivi@russellmcveagh.com or +64 9 367 8344) | Ian Beaumont (ian.beaumont@russellmcveagh.com or +64 9 367 8302) | Anthony Yelavich (anthony.yelavich@russellmcveagh.com or +64 9 367 8388) if you would like to discuss this submission.

QUESTION	COMMENTS
Part A: NZX Capital Raising Settings	
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.	We support the *permission* (but not the *requirement*) to include downside price protection for retail shareholders where there are different components of an offer on the basis that this reflects market practice for SPPs and provides better outcomes for retail investors. The Consultation Paper references that issuers have previously offered a price structure where participants in the Share Purchase Plan ("**SPP**") were offered shares for the lower of the institutional offer price or a volume weighted average price ("**VWAP**") calculation. We agree that such a "lesser of" downside pricing protection mechanism for retail investors is not required and that issuers should be free to decide whether to offer this additional level of downside pricing protection. For certain issues, they may not wish to issue below a certain price (for example due to relationship to net asset value or to ensure that a certain underwritten amount is raised) and the directors will of course also need to certify that the price and terms of issue are fair and reasonable to the company and all existing shareholders (if a company).

	QUESTION	COMMENTS
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?	We support amending the Listing Rules to include provisions permitting an ANREO structure without the need to obtain a waiver from NZX. We expect that an ANREO structure is suitable where: (a) the Issuer requires a substantial amount of funding and the 15% limitation on of Placements is insufficient to raise the level of funding; (b) volatility in the market requires an accelerated timetable (which would also preclude organising a vote of Equity Holders); (c) significant Equity Holders are not expected to take up their Rights; (d) a substantial shortfall is otherwise expected by the market, which may create downward pressure on the price (as investors may be inclined to engage in strategic trading where they sell their positions in the expectation they can buy back in during the shortfall bookbuild). It will be up to the directors to be comfortable under the Companies Act that the price and terms of issue are fair and reasonable to the company and all existing shareholders. However, it may be the best option to raise the capital required by the issuer and we think the board should have this capital raising structure available in those circumstances. In particular, we understand that underwriting and sub-underwriting for ANREO structures is more readily available. The board will naturally face scrutiny from shareholders if they use it. We agree that a 1:1 entitlement ratio is appropriate limitation and support alignment with the ASX Listing Rules in this regard. We expect that the NZX will continue to consider waiver applications on a case by case basis and, where appropriate, grant Issuers a waiver from this requirement if the circumstances of the capital raise indicate a > 1 for 1 ratio is needed to generate the requisite level of funding.

	QUESTION	COMMENTS
3.	Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?	We agree that a renounceable rights issue should allow for all rights holders to practically realise value for their rights. By proposing that issuers must provide for a liquidity event when offering securities in a renounceable offer, we understand that NZX is looking to protect retail shareholders, who frequently hold smaller parcels of shares and would find it difficult to sell their rights unless a liquidity event occurred. Recognising that it is typical for renounceable offers to be supported by either a shortfall bookbuild or rights quotation, we understand that the renounceable offer that did not feature a liquidity event was structured as such due to the challenged financial position of the issuer and its access to underwriting or sub-underwriting. We expect issuers facing these circumstances would typically prefer an ANREO structure. We expect that, in respect of that Issuer or others in similar circumstances, had an ANREO structure been permitted by the Listing Rules, Issuers would be far less likely to consider undertaking a renounceable structure without a liquidity event. Permitting an ANREO structure in the Listing Rules may therefore reduce the need to strictly mandate a liquidity event for renounceable structures. Accordingly, we do not oppose amending the Listing Rules to provide that a renounceable offer must practically allow for a rights holder to transfer their rights, provided that the Listing Rules are also amended to permit ANREOs. We consider that the proposed mark-up to the Listing Rules may be too prescriptive in requiring that a renounceable offer must have a shortfall bookbuild or rights quotation and trading. Issuers should be free to choose the best liquidity structure for their shareholder base (which may include other methods of allowing retail shareholders to trade their rights). For example, where downside pricing protection is included and triggered, it would not seem necessary to include a liquidity event when it is apparent that those rights have no value against the market price of the shares.

QUESTION	COMMENTS

As a point of comparison, the ASX Listing Rules only require an issuer to arrange for the sale of renounceable rights on behalf of shareholders who are not based in Australia or New Zealand and are not eligible to participate in the pro-rata offer. The nominee that arranges the sale of the rights is then required to remit the proceeds of sale to those shareholders (see ASX Listing Rule 7.7). We consider that the Listing Rules should contain similar provisions in respect of the entitlement of ineligible shareholders, who will be unable to exercise their rights regardless of a liquidity event occurring.

Renounceable in relation to a Right or an offer of Equity Securities means that both:

(a) athe Right issued in relation to the or offer of Equity Securities that is transferable (whether on or off-market) by the holder to another person (whether or not an existing holder of any Equity Securities to which the Right or offer relates); and

(b) the offer of Equity Securities in relation to which the Right is issued allows for all holders of Equity Securities a fair opportunity to transfer their Rights, for example, by includinges:

(i) the Quotation of Rights, and/or

(i)(ii) one or more bookbuild(s) for the Shortfall, in respect of which the net proceeds are accounted to non-participating holders of Equity Securities (including any holder excluded from the offer under Rule 4.4.1 (e)); and

(c) if holders of Equity Securities are excluded from participating in the offer under Rule 4.4.1(e), the offer includes one or more bookbuild(s) for the Rights that would have been given to those holders, in respect

	QUESTION	COMMENTS
		of which the net proceeds are accounted to those excluded holders of Equity Securities.
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?	We support amending the Listing Rules to provide that the announcement date for rights offers and SPPs is aligned with accelerated offers. There appears to be little benefit in allowing a longer notice period (aside from allowing new existing or new shareholders the ability to acquire shares prior to the record date or otherwise carry out strategic trading). Through the placement and SPP, and AREO structures, investors no longer have an expectation of being able to trade prior to the ex date. It makes little sense to impose this on a rights offer which is only slightly different in structure. We understand the only remaining reason for this notice period in recent times has been systems requirements for NZX.
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.	We do not agree with the proposed changes to require that the allocation for any Shortfall from a pro-rata offer must be provided in the first instance to all holders who participated in the offer indicating they wished to apply for more than their entitlement. We consider there are multiple issues that arise out of the proposed amendments: • It is unclear whether holders are applying to acquire the oversubscribed securities at the offer price or are to bid a higher price (as would be the case if the Shortfall was met by a bookbuild); • it is unclear to the extent that third party or new investors will be able to participate in a shortfall bookbuild and whether they will be able to place bids in a bookbuild process and how those bids may be weighed against the bids of existing shareholders – this may discourage bids and reduce pricing tension; • this amendment limits Issuers' ability to bring new shareholders onto the register. If amended, Issuers may be incentivised to use their Placement capacity to introduce new

QUESTION		COMMENTS
		• investors (if this was a strategic aim of the Issuer), which would have the effect of diluting the existing holders; and • the proposed change may make it more difficulty to secure underwriting or subunderwriting in respect of the Offer. Pro-rata offers naturally allow all existing holders a fair opportunity to participate. We are unsure of the rationale for providing existing holders greater rights in respect of these shortfall amounts. We prefer an approach where the allocation policy is disclosed (see for example Air New Zealand).
6.	Should we increase the limit for participation in SPPs from the current $15,000 to $50,000 to align with market practice, provided that scaling policies are pro rata?	We support raising the SPP monetary participation limit to $50,000. As identified in the Consultation Paper, market practice has developed whereby issuers use their placement capacity to increase the limit of the SPP component of an offer to $50,000. We support amending the Listing Rules to realign the SPP rules to market practice. In respect of requiring oversubscriptions to be scaled pro-rata according to shareholders' holdings, while we agree that oversubscriptions should be scaled on a pro-rata basis, we consider that issuers should be given the flexibility to provide for a minimum allocation amount in the terms of the offer.
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?	We support increasing the SPP capacity from 5% to 10%. We comment on the disclosure requirements further below. We have outlined our comments on the pro-rata requirement above.

	QUESTION	COMMENTS
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?	As discussed in row 1 above, we would find it unusual for an issuer to offer an SPP that has a higher offer price than a preceding Placement. Accordingly, we are not opposed to introducing downside price protection as concerns multi-component offers for SPP participants on the basis it reflects current market practice. As with our comments above, we agree that the Listing Rules should not require additional downside price protection
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?	We consider that it remains appropriate to for the issuer to decide which date to use when deciding the reference date to calculate scaling of oversubscriptions. There may be circumstances where one date may be fairer to shareholders than the other. Whether this is the case will be depended on the specific circumstances and features of the offer. If scaling occurred with reference to the Record Date, there may be incentive for shareholders to sell their holdings on market after the Record Date and re-buy their holdings via the SPP. This will likely result in downward pressure on the share price and in some structures, such as those that include a "lesser of" price protection mechanism. Such an offer structure will present a short-term profit strategy to those shareholders, and they will likely engage in such strategic trading. We understand that this phenomenon is common in Australia. Such downward price pressure is likely to be detrimental to all shareholders and would ultimately result in issuers making offer structuring decisions to avoid these outcomes. We accordingly oppose the changes suggested to the Listing Rules. Please refer to row 6 for our suggested drafting for our suggested drafting in respect of SPPs.
10.	Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?	We support amendment of the Listing Rules to provide that SPP offers may be subsequently ratified by the Equity Holders of an Issuer. We do not see any reason why shareholders should only be able to do this in respect of Placements. Voting restrictions should not apply (i.e. participants in the SPP should be able to vote on the ratification).

	QUESTION	COMMENTS
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	In our experience, the vast majority of offers will disclose: (a) whether a lead manager or joint lead managers ("**JLM**") have been appointed and their names; (b) whether the offer is underwritten and (if applicable) the extent of the underwriting and the name of the underwriter, and accordingly, we do not oppose including this information in the Corporate Action Notice. However, we note that because these details are typically announced in the Offer Documents, requiring their inclusion in the Corporate Action Notice is duplicative and increases compliance costs on the Issuer. Additionally, the Corporate Action Notice is not regarded as the primary disclosure material by the market. Investors will primarily review the Offer Document and investor presentation to confirm important details of the offer, with the Corporate Action Notice seen as a mechanical document, setting out logistical information concerning the issue of Equity Securities. Fees paid to the JLMs and the underwriters are sometimes disclosed in offer materials, including as a "transaction cost" item – particularly where issuers disclose the proposed use of proceeds in their Offer Documents. However, we consider that consultancy or underwriter fees will generally be commercially sensitive and should not be disclosed. We think this prejudices the ability of an issuer to negotiate its fees effectively based on the size and complexity of its fund raising. We suggest it be left to issuers to determine whether to disclose underwriting termination events. In some cases, it may be useful for the issuer to do this to manage the expectations of sub-underwriters – particularly where termination events are more limited than usual or otherwise unusual.

Russell McVeagh

QUESTION	COMMENTS
arrangements may be amended or terminated	We strongly discourage an outcomes which would require disclosure of any details relating to subunderwriting. While the availability of subunderwriting is important to the economics of whether an offer can proceed (and the amount of any discount), the subunderwriting process is undertaken independently from the Issuer. The Issuer has little to no involvement in sub-underwriting fees (they are paid by the underwriter), selecting who the subunderwriters are or negotiating the contracts between the underwriters and the subunderwriters. The subunderwriting process is managed by the underwriter, who is principally responsible for managing its own risk and will ultimately acquire any shortfall in shares directly if it is unable to obtain subunderwriting or the subunderwriters default on their obligations or otherwise terminate their subunderwriting agreements (assuming the underwriting agreement remains effective). Disclosure of subunderwriting details could impact the availability of subunderwriting in two regards: (a) subunderwriters that represent high net worth private investment vehicles may be resistant to having their identities disclosed to the market. These types of investors will be less likely to participate in subunderwriting processes; and (b) disclosing subunderwriting fees will create an expectation that all subunderwriters are paid equivalent fees. This will increase the cost of subunderwriting and therefore underwriting and could result in offers only being partially underwritten. There appears to be little basis for requiring the Issuer to obtain information related to subunderwriting, which is likely to be commercially sensitive and confidential, and subsequently release it to the market. We are also unsure what issue this would look to solve.
12. NZX seeks feedback on whether to require disclosure of the following (some of which are	We generally agree with the principle that an Issuer should carefully consider and typically disclose:

QUESTION	COMMENTS
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: (i) 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. (ii) 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.	(a) a Shortfall allocation policy; (b) scaling policy; (c) Placement eligibility policy; and (d) reasons for selecting a non-pro-rata offer structure. However, we are cautious to recommend including mandatory disclosure of these items in the Corporate Action Notice. When disclosed, these items are generally included in the Offer Document and investor presentation, which are the documents that investors will refer to in the first instance. The Corporate Action Notice itself is not currently seen as a core disclosure document. Accordingly, we consider it is more appropriate for the Listing Rules to be amended as to require disclosure of these matters in the Offer Document or other offer materials (such as the investor presentation).

QUESTION		COMMENTS
	(iii) 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.	We do not oppose permitting NZ RegCo to request allocation schedules from issuers. We are mindful, however, of what NZX RegCo may be trying to gain visibility over and would oppose a blanket policy of requesting the allocation schedule following every secondary offer. In absence of any Rules requiring an issuer to allocate shares offered under a Placement a specific way, we do not see a compelling reason to review this information or what benefits to the market this review may provide. If NZX is primarily concerned with influencing issuer behaviour in relation to setting an allocation policy, we consider that the disclosure of the allocation policy (as discussed above) will achieve this outcome. However, we note that an issuer's strategic objectives for raising capital via a Placement will be circumstantial to each equity raise and the allocation schedule for each will reflect those circumstances.

QUESTION		COMMENTS
		In our view it would be better to focus on compliance with upfront disclosures such as the shortfall allocation policy. Where there is a risk that an issuer has not followed the Listing Rules and the allocation schedules may be required for enforcement action, we agree that NZ RegCo should have the ability to obtain these records. However, we are mindful that NZX has general powers of production under Rules 9.12 and does not need to rely on the proposed Rule 4.17.9(d) if there a suspected breach of the Listing Rules. If the NZX provides a further explanation of what it sees the purpose of requesting the allocation schedules to be, we would be happy to provide further feedback on this item.
14.	NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.	We welcome NZX releasing additional guidance on capital raisings, particularly guidance that outlines processes or relates to NZX's interpretation of specific rules. We would caution against guidance that appears to advocate or promote certain commercial objectives over others – noting that the commercial reasons or drivers for raising capital will be unique to each issuer but that the media may latch on to certain statements in isolation and use them to criticise issuers making structuring decisions in good faith on advice and after considering the range of options.
Part B: Listing Options		
15.	**SPACs** 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?	As NZX is well aware, the SPAC market has been very strong in offshore regions up until recently, other than in Australia, where they are not supported by ASX. We are supportive of encouraging SPAC listings in New Zealand. They have the potential to bring a range of other enterprises to the market - particularly companies that have the potential for much greater growth than just yield stocks. Consistent with various literature that has been written on SPACs, we think that it is important that the SPAC legal framework is not overly complicated.

Russell McVeagh

QUESTION	COMMENTS
	In our view, it should be possible for SPACs to largely operate within the existing disclosure regime: • A SPAC IPO could be made under a product disclosure statement. • The Takeovers Code provisions would likely apply to a transaction which involves the issuance of stock to the vendors of the business the SPAC ultimately targets. • The Listing Rules would likely require a Profile in connection with the change in business. In terms of protections, we encourage: • A mandatory escrow with a trustee for the SPAC proceeds until they are deployed in an acquisition or returned to investors. • At least one year's audited accounts for the target business to form part of the Profile. • A clear requirement for disclosure on who bears fees in the event that the SPAC is unable to find a target. • Clarity around expectations for disclosure of lock up restrictions for the shares held by promoters of the SPAC. It is important that any SPAC laws are not made so complicated so as not to discourage the use.
16. **Dual class shares**	We do not submit on dual class structures.

	QUESTION	COMMENTS
	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?	
17.	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)?	
18.	**Conclusion**	Thank you for considering our submission. We would be pleased to discuss the matters raised in this submission with you further.

5 September 2022

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Head of Policy and Regulatory Affairs
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Sent by Email
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Dear Kristin

Response to Consultation Paper re NZX Capital Raising Settings and Listing Options

We have set out below our comments in relation to certain elements of Part A of the Capital Raising Settings and Listing Options Targeted Review Consultation Paper (**Consultation Paper**).

We appreciate the opportunity to comment on these matters. We recognise that the submission date was Friday 2 September, and are grateful for the additional time you have given us to respond.

Introductory Comments

Overall, we support NZX's general approach to the proposed amendments, outlined on page 14 of the Consultation Paper. We particularly endorse the point made in paragraph 2, concerning the critical role of boards in determining the best structure to use for a capital raising. We fully support the proposal to allow companies to implement an ANREO offer structure without exemptions.

We agree also with the comment made in initial feedback that directors should be looking ahead to the company's capital raising needs and planning accordingly – with the interests of all shareholders clearly in mind. The capital raising rules must recognise, however, that even the best standards of corporate governance only take a board so far.

- Directors, when conducting a business planning process, make certain assumptions about current and future economic conditions, balance likely risks and opportunities, and make judgments. Directors cannot be certain they will be right, and nor are they required to be – as long as they acted in what they believed were the best interests of the company.

- Directors need to remain free to respond to a crisis, and current conditions are extraordinary. NZ is exposed to the several global mega-trends: enduring Covid impacts, unusual weather patterns caused by climate change (including in NZ); de-carbonisation; war in Ukraine; Russian responses to other nations' actions in support of Ukraine; geo-political shifts (and particularly in relation to China); startling levels of inflation world-wide; and ever-growing consumer activism. Each of these has unpredictable consequences – both direct and indirect, individually or in combination, and the impacts can be sudden and significant.

- For companies impacted unexpectedly by these conditions, the ability to raise capital quickly is as imperative as it was when the Covid 19 pandemic hit NZ. In our view, this speaks to the need to retain as much flexibility in the hands of directors as reasonably possible. This is particularly important given it is the directors who are ultimately responsible for managing the business and affairs of the company.

Responses to Consultation questions

Question 1- Downside protection

On balance we support the introduction of downside protection for retail pricing. We understand that on most deals, institutional pricing will be determined first and retail pricing set by reference to this.

Question 2 – ANREOs

We fully support the proposal to permit ANREOs, as outlined in the proposed LR 4.4.2(c). In our view, this meets a company's need for flexibility and speed, while balancing interests of shareholders. That this change will align NZX market practices with Australian practices (among others) is, in our view, also positive. Our understanding from the early COIVD capital raise phase in 2020 was that the structure was required in order to obtain underwriting.

Question 3 – Liquidity event for renounceable structures

Companies should be free to offer an off-market rights trading facility only, if that is what the directors consider is most appropriate.

We agree with the general thrust of the proposed change: ensuring that shareholders who choose not to participate in a pro-rata offer are able to receive any value that may exist in their rights.

We don't agree, however, that directors should be limited to only a bookbuild, or quoting the rights, excluding an alternative off-market process.

In most cases a bookbuild or quotation of rights will be appropriate, but there may be instances where these are not viable or sensible options. For example, distressed companies or those in challenging sectors – eg oil and gas companies, where institutional investors are reticent about investing. If institutions are not interested, and existing holders are offered an oversubscription facility (as the new LR 4.3.1(a)(ii) would require) there is unlikely to be any on-market interest in rights (why would you pay a broker to secure more when you could just over-subscribe?), and little chance of bids in a bookbuild. That would make quotation of rights, or forcing a bookbuild which would attract no interest, pointless exercises.

We are therefore concerned with the way NZX is proposing to redraft LR 4.3.1(a), together with the amended definition of Renounceable, to achieve what is proposed. In our view, the LRs should permit Directors to raise capital quickly, through a renounceable offer, but without having to quote rights which are unlikely to trade, or conduct a bookbuild which is unlikely to attract any interest. Boards should have the flexibility to determine the best mechanic for renunciation.

If a 'no bookbuild / no quotation' approach is taken, however, we would propose that the following protections of minority shareholders are retained:

- notice of the record date should be provided, so shareholders can trade out of the stock if desired (as distinct from the approach taken in the proposed amendment to LR 4.17.6(b), for other rights issues, where no notice need be provided); and

- off-market renunciations should be permitted, so if shareholders find someone willing to purchase their rights, they can trade them.

Companies should remain free to conduct separate bookbuilds at the end of each limb of a dual-limbed offer structure

The new definition of Shortfall and LR 4.3.1(a)(ii) and (iii) suggest that an issuer would not be able to have separate bookbuilds at the end of the institutional and retail tranches of an AREO or ANREO.

The drafting of new LRs 4.3.1(a)(ii) and (iii) requires any Shortfall to first be offered to existing holders, suggesting the need for a general pool at the end. Such a result would run counter to what is common market practice, defeating the two principal purposes of a dual limbed offer structure (whether renounceable or otherwise): speed of execution for the institutional limb, thus (a) enabling the company to access the invested funds quickly, and (b) reducing "on risk" time for underwriters, and so reduced underwriting costs.

If the proposed drafting is seeking to eliminate premium pricing differences between institutional and retail bookbuilds, then we suggest that issue is addressed specifically, and not with a more general requirement in relation to the offer structure.

We are also concerned with the right of retail shareholders to have access to a priority pool within the Shortfall (as LR 4.3.1(a)(iii) seems to require) without competitively bidding for it as institutions would. We feel this would adversely affect bookbuild pricing. Perhaps it needs to be made clear that LR 4.3.1(a)(iii) applies only to the allocation of oversubscriptions, not any bookbuilds conducted after the oversubscriptions have been satisfied.

Question 11 – Disclosure of underwriting and sub-underwriting arrangements

We don't agree with the suggestion of "blanket" disclosure of underwriting fees or the identity of sub-underwriters. We are generally comfortable with other enhanced disclosure requirements proposed in relation to underwriters and sub-underwriters.

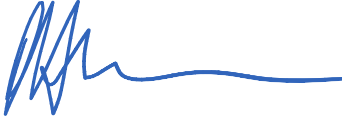
Fees information

- Disclosure of fees information should be limited to the existing – and understood – disclosure requirements (eg related party rules, materiality considerations etc). Underwriting fees may well be "of interest" due to the value alone, but the number alone is meaningless without understanding the risk assessment (for the underwriter) and value considerations (for the issuer) that the agreed fee represents. These matters are for directors to consider and assess, not shareholders. We have no objection to disclosure of fees information where triggered by existing disclosure requirements, underpinned by a separate, understood and generally applicable rationale for that disclosure.

Sub-underwriters

- Disclosure of the identity of sub-underwrites should also be limited to existing disclosure requirements (eg SPH disclosures). The directors of the issuer will have already decided that the overall underwriting package, including sub-underwriters, is acceptable. We therefore query the utility to shareholders of seeing a list of names of sub-underwriters, absent the generally applicable and understood rationale for the more generally applicable disclosure requirements.

Yours faithfully
SIMPSON GRIERSON



Don Holborow
Partner

New Zealand Shareholders Association Inc.

NZSA®

Many Investors, One Voice

September 16th 2022

NZSA response to NZX Consultation
NZX Capital Raise Settings and Listing Options

The NZ Shareholders' Association (NZSA) would like to thank NZX for the opportunity to comment on this review of Capital Raise Settings.

We recognise that capital raise methodologies are the subject of considerable debate within the investment stakeholder community. NZSA is currently its own external assessment policy in relation to capital raise methodologies and their impact on retail investors. This new policy is likely to offer a more situational approach in determining what is in the best interests of shareholders.

General Commentary on NZX Consultation Document

1. NZSA continues to support the general principle expressed in the consultation document that "*as owners of the company, existing shareholders should be offered the first opportunity to participate in capital raisings on a pro-rata basis.*"

2. We also note the limitations placed on issuers by the existing listing rules in relation to non pro-rata capital raise methodologies (eg, placements and Share Purchase plans).

   In our submission on the NZX Code of Corporate Governance in January 2022, NZSA signalled a desire for greater disclosure where issuers did **not** use an entitlement-based capital raise structure. We continue to advocate for that position.

3. We agree with the NZX commentary that "*there often needs to be a heavy reliance on external advisers to support decision making*". We believe that the interests of advisors, investment bankers and underwriters are often not aligned with the interests of retail shareholders.

   We would prefer to see a situation where existing holders are given a pro-rata opportunity and non-participating existing shareholders retain some value through a bookbuild process, even if this necessitates somewhat higher investment banking fees vs the situation where the investment bank/underwriter is almost assured access to a significant number of discounted shares.

Consultation Questions – Capital Raise Settings

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.**
   Yes. We note that many current issuers, including the recent placement + SPP by Heartland Group Holdings (NZX: HGH) utilise a form of downside price protection.

2. **Should NZX's rules allow ANREOs as a permitted pro rata offer with a 1:1 offer limit?**
   No. We note that issuers on the NZX are not able to utilise ANREO's (accelerated non-renounceable entitlement offers) on the NZX, although this is the most common form of secondary market capital raise in Australia.

   NZSA does not support ANREO offer structures in New Zealand (or any other) public market.

   a. The increase in numbers of retail shareholders over the past two years has led to an overall decrease in average investor knowledge of capital raise structures – including the need to participate in capital raise processes to avoid dilution.

   b. NZSA believes that NZX Rules should offer protection to those who lack the capability to protect themselves through active participation.

   c. While this may create a short-term imbalance with NZX competitors, we also believe that it is in the long-term interests of NZ's investment markets to protect and encourage 'new' NZX investors to remain equity investors.

3. **Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?**
   Yes. NZSA believes that a form of 'bookbuild' should be required in all cases, to offer the potential for value to those shareholders who otherwise take no action (see 2.a and 2.b above). We also believe a rights quotation is desirable.

   NZSA notes the capital raise by NZ King Salmon (NZX: NZK) earlier in 2022. While billed as a "renounceable entitlement offer", there was no mechanism for non-participants to recover value, as the rights were not traded nor supported by a 'bookbuild' process for rights not taken up, essentially rendering this a non-renounceable offer.

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?**
   At a general level, NZSA would prefer harmonisation of the rules and conditions surrounding a "traditional" entitlement offer and an accelerated offer.

   NZSA believes a greater degree of harmonisation is possible where our feedback in section 3 is adopted – ie, where there is a liquidity event that returns value to non-participating shareholders.

a. The value of the current 5-day rule is that it provides an opportunity for shareholders who do not wish to, or cannot, subscribe for further shares to sell their shares on market cum rights and retain value.

b. Were a liquidity event, such as a shortfall bookbuild or separate quotation of rights, made a requirement, this would negate the requirement for the 5-day announcement period.

c. If there is no requirement for a liquidity event, NZSA would not support the removal of the 5-day announcement period.

While NZSA is supportive of removing the requirement for an announcement five days prior to the 'ex-date' where a liquidity event is required, we also would like further review of the entitlement offer process to enhance investor understanding and offer simplicity and effectiveness that will encourage issuers to utilise an entitlement offer.

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.

Yes.

NZSA contends that the allocation for the shortfall should be made pro-rata based on the size of their existing holdings on the record date.

NZSA does not support a pro-rata allocation based on the number of shares that were applied for in excess of the holder's entitlement. The number of shares applied for in excess of the entitlement may not bear any connection to the original level of holding. This type of allocation may result in investors unfairly 'gaming' the offer, for example by buying a small holding cum offer and then over-applying for new shares).

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?**

Yes.

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?**

No. NZSA believes that retail shareholders should maintain the flexibility to examine each issuer's capital raise on its own merits. This also encourages issuers to not take existing shareholders (owners) for granted in determining capital raise methodologies.

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?**

   Yes. See question (1) above – we believe this is a similar protection.

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?**
   Yes. NZSA believes that most issuers already follow this practice when undertaking an SPP.

10. **Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?**
    NZSA does not feel this serves any useful purpose where the maximum issue remains at 5%.

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**

    Yes.

    NZSA would also like to see additional disclosure for non pro-rata offers, including both Share Purchase Plans (SPP's) and Placements:

    a. The percentage of individual shareholders that had the opportunity to maintain their pro-rata holding in the company following a non pro-rata capital raise.

    b. Explicit reporting on shareholder dilution (i.e., shareholdings pre and post cap raise.

    c. Incentivisation fees paid to brokers and/or investment bankers

    d. The process/logic used by the Board to determine the (non pro-rata) capital raise structure and what options were considered.

    e. Factors that may determine an optimal capital raise structure include:

- Timing of required capital. However, NZSA also believes that hastily-arranged capital is also a sign of poor capital management planning and/or poor governance processes.
- Appetite of existing investors to inject further capital. This is dependent on corporate maturity (eg, early-stage funding), solvency and/or issuer risk profile. For example, New Talisman Gold Mines (NZX: NTL) is in the process of raising capital via the issue of Convertible Notes, a position supported by NZSA in the context of the company's risk profile for existing investors.
- Ability to command a **premium** to share price for early stage capital. While not an NZX entity, NZSA notes the capital raise undertaken via Placement by Syft Technologies (USX: SYF) early in 2022.

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.

NZSA supports these disclosures in addition to its disclosure submission for non pro-rata offers discussed in question 11.

As NZSA does not support ANREO structures, we are unable to consider section 12(d) above.

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.

NZSA supports any measures by which NZ RegCo is able to fulfil its obligations and responsibilities in monitoring the NZX Listing Rules and their effectiveness.

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

NZSA is in the process of developing a new policy that will set out market conditions under which different forms of capital raise methodologies might be acceptable for shareholders.

See our submission in section 11(e) above.

Consultation Questions – Listing Options – SPAC's

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?

NZSA supports the introduction of SPAC's to the NZX.

Many current issuers seem oblivious to the significant amount of NZ-domiciled cash held within the NZ banking system - around $150 billion in resident term deposits as at July 2022. While this is a slight reduction from the Covid-era highs of early 2020, this still represents a significant pool of potential capital for local issuers as an alternative to seeking "international investors".

The minimum additional standards within the N ZX Listing Rules that could be considered for SPAC's are:

a. Clear disclosure of the expected costs of operating the SPAC prior to any acquisition. This allows investors to assess the loss in fund value if an acquisition does not occur.

b. A time limit by which the funds held within the SPAC should be used or returned, unless extension of time granted by shareholders.

c. Shareholder approval for the proposed acquisition.

NZSA expects there would be further consultation ahead of the introduction of a specific SPAC regime.

Consultation Questions – Listing Options – Dual Class Shares

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?

For the sake of completeness and in the spirit of open-mindedness, the ability to accept listings of dual-class shares based on differential risk profiles should be studied further. However, NZSA

believes that dual class share structures based on differential voting power should **not** be a feature of the NZX listed environment.

NZSA remains concerned that differentiation of share classes by voting rights may allow unfair concentration of voting power in the hands of a select few rather than other shareholders.

In NZ markets, this occurs even without dual class shares in place - we note the recent events with NZ Automotive Investment (NZX: NZA) as an example, where a major shareholder caused the resignation of the Board – including all independent directors. NZSA has no wish to make it easier for such events to occur.

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)?**

   NZSA believes that dual class share structures based on differential voting power should **not** be a feature of the NZX listed environment at all.

SIA | SECURITIES INDUSTRY ASSOCIATION

Kristin Brandon
Head of Policy and Regulatory Affairs
NZX
11 Cable St
Wellington 6140

2 September 2022

By email: kristin.brandon@nzx.com
Cc: policy@nzx.com

Dear Kristin,

Securities Industry Association submission: NZX Capital Raising Settings and Listing Options Targeted Review (July 2022)

Thank you for the opportunity to submit on the NZX Capital Raising Settings and Listing Options Targeted Review. Please find our Securities Industry Association (**SIA**) submission attached.

This submission addresses the questions most relevant to SIA members and reflects the views of the members it affects. Please note that there was not a shared industry view on two of the questions and this has been indicated in the submission. Some firms may make a submission to reflect their own company views and those views may or may not be reflected in this submission.

No part of this submission is required to be kept confidential.

Please get in touch should you have any questions about this submission or require further information.

Yours faithfully

Bridget MacDonald
Executive Director

SECURITIES INDUSTRY ASSOCIATION
T: 021 345 973 E: bridget@securities.org.nz

SIA | SECURITIES INDUSTRY ASSOCIATION

To: Kristin Brandon, NZX

Submission: **NZX Capital Raising Settings and Listing Options Targeted Review**

Date: 2 September 2022

Introduction

The Securities Industry Association (**SIA**) thanks NZX for the opportunity to submit on the **NZX Capital Raising Settings and Listing Options Targeted Review** consultation paper.

SIA welcomes the opportunity to participate on the review of NZX's equity capital raising settings. This submission addresses the consultation questions most relevant to SIA members and reflects the views of the members it affects. Please note that there was not a shared industry view on two of the questions (Questions 2 and 12 d) and this has been indicated in the submission. Some firms may make a submission to reflect their own company views and those views may or may not be reflected in this submission.

SIA supports additional listing pathways to develop the listed market in New Zealand. In general, we support the intention for changes to NZX's Rules to achieve best practice standards for shareholder protections and ensure the NZX's Rule settings reflect international developments in relation to primary and secondary capital raising to ensure the market operates with transparency and integrity to maintain the confidence of the public and regulators. We outline practical implications, concerns and challenges below, and submit suggestions on how these might be addressed.

Response to Question 2.

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

There is not a shared industry view for this question. However, the two positions are provided below for your information:

- Position 1: Yes. There are situations where ANREOs are helpful to issuers (particularly in times of distress when quick access to capital is required) and therefore should be one of the various capital raising options available.
- Position 2: No. The proposed change to allow ANREOs is not supported, as ANREOs should remain rare and infrequent, and should continue to require either shareholder approval or a waiver, primarily due to the fact that these offer structures have the potential to significantly dilute the shareholding of non-participating shareholders, even with a 1:1 offer limit.

Of those members who have a strong view on this matter, more were in support of Position 1.

Response to Question 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?

In SIA's view, any shortfall allocation policy should be at the discretion of the board of the issuer given the board is taking the risk in making the offer. SIA is not supportive of a proposal that requires shortfall from pro rata offers to be provided in the first instance to existing shareholders who participated in the offer, on the basis that;

i. *Fundamental rationale for an entitlement offer*

Entitlement offers are intended to offer existing shareholders the opportunity to participate on a 'pro rata' basis in an equity capital raising, ensuring that they can avoid dilution of their existing equity holding in an entity. The entitlement offer structure has never (as a matter of law or policy) intended to:

- provide preferential treatment for existing shareholders to increase their equity shareholding in a business if they wish to do so; or
- constrain the ability of an entity's board to act in the best interests of shareholders as a whole by choosing to adopt alternative allocation priorities with respect to shortfall to the extent existing shareholders are either ineligible to participate or do not wish to take-up their entitlements (discussed further below).

Fundamentally, an entitlement offer is a mechanism for an entity to access the equity capital markets to raise funds, and while many issuers do seek to preference existing shareholders in respect of shortfall allocations, restricting allocation flexibility over shortfall unduly risks the efficiency and effectiveness in which entities are able to raise equity capital.

Constraining allocation flexibility over institutional or retail shortfall reduces the overall flexibility and utility of using an entitlement offer structure and could ultimately encourage entities who would have otherwise proceeded with an entitlement offer to resort to placement structures in order to obtain additional allocation flexibility. SIA does not consider this is the desired outcome of the proposed changes.

ii. *Could result in a suboptimal outcome for renouncing shareholders*

In the context of an accelerated renounceable entitlement offer, the issuer / underwriter must seek to obtain the best price for the renounced securities (both institutional and retail). This is best achieved by offering any shortfall in a variable price bookbuild process to institutional investors (in practice this is usually two shortfall bookbuild processes, one for the institutional offer and one for the retail offer). Any premium to the offer price achieved under that bookbuild structure is then returned to renouncing shareholders (such that they receive maximum value for their renounced entitlements).
The fact that only investors who bid at the final price in the variable price book can be allocated shortfall entitlements means that some shareholders who wish to apply for additional shares will be excluded. Constraining allocation flexibility over the shortfall bookbuild process is inconsistent with the objectives of a renounceable entitlement offer (i.e., to return maximum value for renouncing shareholders) as this could lead to renouncing shareholders receiving less for their entitlement if existing shareholders are not willing to pay as much as new investors.

iii. *How would this work in practice for retail shareholders?*

It is not clear how retail investors could participate in a variable price bookbuild process and how certainty of funding could be achieved for either the issuer or the best price achieved for renouncing holders. It is equally unclear how this would work on accelerated deals where only institutional holders participate in the institutional offer however the rights offer is made to all holders in permitted jurisdictions (including retail holders). Is it intended that retail investors, to whom offers have also been made, should participate in the institutional shortfall

bookbuild? This would be problematic logistically, but also result in the unanticipated outcome of retail investors having three optional take ups, for example, in the insto bookbuild, the retail offer and the retail bookbuild. This could well lead to unfair consequences but also risk not having the offer underwritten, due to the increased risk and lack of certainty posed by actual retail take, which will be an unknown.

iv. Access to underwriting and the need to balance holders' rights against other priorities

SIA appreciates the desire to prioritise the interests of existing holders to preserve their existing equity holding and (if desired) increase it. However, once holders have participated in the entitlement offer and taken up their pro-rata entitlement, we consider that there are other factors which a company should have the ability to prioritise through the capital raising process ahead of providing priority allocations to existing retail shareholder who wish to increase their holdings, in particular access to underwriting and certainty of funding. The ability of entities to obtain full underwriting of accelerated entitlement offers depends upon an underwriter's assessment of the risk associated with (amongst other things) being able to sell the underwritten amount of stock to existing shareholders and distribute any shortfall, in particular through:

- obtaining sub-underwriting for the retail shortfall component of any entitlement offer; and
- obtaining institutional demand for anticipated institutional entitlement offer shortfall.

The desire of investors to bid for institutional shortfall and offer sub-underwriting commitments for retail shortfall is likely to be materially reduced by the proposed listing rule changes; and as such the risk profile associated with underwriting such transactions may be materially increased. As such, to the extent allocation flexibility over institutional or retail shortfall stock is constrained, the ability of some issuers to obtain underwriting for accelerated entitlement offers may be materially diminished.

Ultimately, this could reduce the ability of entities to access underwriting for entitlement offers that are being used to fund acquisitions and/or capital investment initiatives to support growth. Underwriting is particularly important in the context of acquisition funding, where boards require certainty of funding prior to the execution of binding acquisition documentation. In particular, New Zealand listed issuers have a competitive advantage compared to overseas listed issuers in such processes including by virtue of our accelerated entitlement offer structures providing increased upfront funding certainty, and this change could materially impact this advantage.

SIA thinks could be particularly injurious to entities that are in financial distress and in need of underwriting support when accessing the equity capital markets. In these circumstances, entities usually need to use entitlement offer structures because of the quantum of equity required, but also require allocation flexibility in order to obtain sufficient market support for the equity raising given there are often a number of shareholders who may not participate. In such situations, finding underwriting support for an equity raising could in fact be determinative of an entities ability to remain a going concern.

In summary, SIA considers that the proposed changes risk potentially reducing the ability of entities to access underwriting and do not sensibly balance the rights of existing shareholders and the need to provide flexibility for boards to make decisions regarding the structure of entitlement offers that they believe are in the long-term best interests of shareholders.

v. Uncertainty of funding and increased cost of capital

For the reasons outlined above, in respect to the assessment of underwriting risk and the ability to provide underwriting support, ultimately, SIA considers that reducing allocation flexibility over the institutional and retail shortfall has the potential to:

- materially increase the size of the discount required to obtain underwriting for accelerated entitlement offers; and
- increase the fees charged by underwriters due to the increased risk associated with underwriting accelerated entitlement offers,

and therefore increase the cost of NZX listed company's equity capital.
The funding uncertainty and increased cost of capital that would result from the proposed changes has the potential to meaningfully reduce the ability/desire of certain types of issuers (particularly smaller companies with lower quality existing registers), from using entitlement offer structures to access the capital markets or place New Zealand listed issuers at a material disadvantage in competitive business or asset sale processes.

vi. Introduction of new investors onto the register: the ability to introduce new institutional investors onto the register is an important potential priority for some entities when they are accessing the equity capital markets

The mandatory nature of the proposed changes to the allocation rules for entitlement offers will limit issuers' ability to expand their institutional registers without reducing their placement capacity, even when existing shareholders have been offered the ability to participate on a pro rata basis and have declined.

Having a strong, diverse and supportive institutional register promotes increased liquidity and trading in an entities' shares and improves access to equity capital markets in the future (which in turn can be used to support organisational growth through acquisitions or capital investment and/or support the entity in times of potential organisational challenge, for example in a recapitalisation scenario).

Constraining allocation flexibility over institutional or retail shortfall reduces the overall utility of using an entitlement offer structure and could ultimately encourage entities who would have otherwise proceeded with an entitlement offer to resort to placement structures in order to obtain additional allocation flexibility. SIA does not consider this is the desired outcome of the proposed changes.

vii. Conflicted boards when acting in the best interests of the company

For the reasons outlined above, it is possible to anticipate situations where the increased uncertainty of the success of an entitlement offer resulting from the proposed changes to allocation rules for entitlement offers, may see boards in a conflicted situation when determining appropriate offer structures and it may have the contrary outcome of pushing issuers toward the certainty of an underwritten institutional placement over the uncertainties of a non-underwritten entitlement offer.

viii. International investment reluctance to invest in New Zealand

As outlined above, the proposed changes will materially reduce allocation flexibility for boards when undertaking entitlement offers, in particular with respect to the allocation of institutional and retail shortfall to non-holders.

This has the potential risk of alienating international institutions, which often rely on liquidity events, such as equity capital raisings as a catalyst to enter the register of an NZX listed company – this could come in the form of:

- Bidding for shortfall in the institutional entitlement offer; and

- Offering sub-underwriting support for the retail entitlement offer shortfall.

International institutions may be less keen to participate in New Zealand offers due to the reduced likelihood that they could receive an allocation of shortfall stock, which will ultimately not benefit the market or issuers' access to equity capital and result in increased costs of capital for New Zealand listed corporates.

ix. Not in line with offshore exchanges and will lead to negative outcomes for the NZX

SIA is not aware of similar rules on other global exchanges. This may result in international institutional investors perceiving the NZX and New Zealand as an unattractive place to invest, and ultimately reduce the NZX's attractiveness as a listing venue. We consider that a key benefit of entities being listed on the NZX is its flexibility to be able to access new capital to grow, acquire assets or strengthen their balance sheet. This proposal would restrict this access for the reasons stated above.

x. There could be a more targeted approach to reduce undesirable behaviour

As SIA understands, the issue that these proposals are intended to address (e.g., misuse of allocations) typically occur in smaller and non-underwritten transactions. To penalise the whole market for the misdeeds of a few, is unduly burdensome. It would be preferable to review the actions of those who breach their directors' duties rather than penalise the whole market.

Response to Question 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?

Yes, an increase in the SPP threshold is positive, when an SPP is used with an institutional placement the increased participation limit will help to facilitate pro rata allocations to retail shareholders with relatively large holdings (when compared to other retail holders).

Response to Question 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?

As above, an increase in SPP capacity is positive, when an SPP is used with an institutional placement the increased placement capacity will ensure an SPP is less likely to be constrained by placement capacity and will be able to be sized so that pro rata allocations are available to a greater number of retail shareholders.

Response to Question 11.

Should we require increased disclosure of underwriting (and sub-underwriting) arrangements through corporate action notices?

SIA disagrees that sub-underwriting details should ordinarily be disclosed, including names of sub-underwriters, fees and termination arrangements. While this may make sense in the context of related parties, associates and possibly substantial holders, we think that such a proposal may have a cooling impact on the willingness of sub-underwriters to participate.

SIA is not supportive of the proposal to require disclosure of: fees payable to parties with a formal role in an offer (including JLMs, underwriters and sub-underwriters); the extent of any underwriting; the fact of any sub-underwriting; and the names of any sub-underwriters, and the extent of any sub-underwriting. In our view any decision to disclose this information should rest with the board of the issuer and any underwriter(s).

Response to Question 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.**

In general, SIA is supportive of this change. If NZX is simply wanting a broad statement confirming that the issuer/board will seek to maximise value for the company and its shareholders through allocation of the shortfall, this could be acceptable.

However, as noted in our response to Question 5, to require anything more specific seems unnecessary for many reasons including:

- Existing shareholders have the opportunity to participate on a 'pro rata' basis, an entitlement offer was not created to provide preferential treatment for existing shareholders to increase their equity shareholding and therefore how the shortfall allocation is undertaken should be at the discretion of the board/issuer;
- Boards should retain flexibility with regard to who they allocate to on the day seeking to maximise value the company and all shareholders;
- Flexibility should be retained over who to allocate shortfall to depending on a number of factors including; allocating to new long term institutional investors who are using the liquidity event to enter the register; or preference to institutions who show price leadership and support the bookbuild to achieve a superior result for renouncing shareholders. Whether or not these specific factors come into play in the allocation decision will depend on the specific events of the bookbuild and cannot be predetermined.

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).**

SIA is comfortable with disclosure of the details of the offer, including the purpose of the placement; whether Related Parties are eligible and any details of escrowed shares issued in the placement; and whether existing shareholders will be entitled to participate in the offer.

We are not supportive of the proposed requirement to disclose the reason for conducting a placement rather than a pro-rata rights issue; we are also not supportive of the issuer disclosing details of the approach it took in identifying investors to participate in the placement and how it determined allocations.

SIA believes it is excessive to have to provide 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) on the basis that a placement has a cap of 15% of shares on issue. With a placement headroom constraint of 15% this limits the potential for shareholder dilution and we therefore query the basis and rationale for this increased disclosure.

There is also the risk that the increased disclosure obligations could result in unreasonable expectation that existing shareholders will have an “entitlement” to participate in placements. We consider this is not consistent with the concept of a placement which is used by Companies to raise funds from both new and existing institutional holders up to 15% of shares on issue without member approval. Placements are not pro-rata offers and should not be treated as such.

There are also practical challenges in determining pro rata holdings due to the reduced timeframe under which placements are undertaken. Pro rata offerings require holding and register reconciliations which can take time to prepare, if these were to be required they would reduce the benefits of a placement.

d) Reasons for selecting an ANREO structure.

There is not a shared industry view for this question, although there are two positions outlined below for your information:

- Position 1: Issuers should have the freedom to undertake a capital raising using the method they deem most appropriate at the time, taking into account shareholder value. It would appear to be unnecessary to require issuers/boards to disclose the reason for utilising one structure (i.e. an ANREO) when the Company could use other structures (i.e. a Placement and SPP) to get a similar result but not have to make such disclosure. This requirement appears to be favouring renounceable offers over all other forms of raisings, presuming that they result in better outcomes, when this is not always the case.
- Position 2: As noted above (Question 2, Position 2), ANREOs should be rare and infrequent and only permitted if approved by shareholders or if a waiver is granted. As part of a waiver application, an issuer should be required to provide the information stipulated in r 4.4.2(c)(ii) of the Listing Rules Exposure Draft – this could also be released through the market announcement platform (**MAP**).

Of those members who have a strong view on this matter, more were in support of Position 1.

<u>Response to Question 13.</u>

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.

SIA would not support the provision of allocation schedules to NZ RegCo given the confidentiality obligations owed by the underwriter to institutional bidders. This imposes undue regulatory burden and may discourage issuers from raising capital on the NZX by way of placement. We are interested in why such a mechanism would need to be introduced.

Discussion welcomed

SIA thanks NZX for the opportunity to submit on this consultation.

We welcome further discussion on the points raised in this submission. Please get in touch at your convenience should you like to meet with SIA or its members or if additional information is required.

Contact:

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NZ | **CORPORATE GOVERNANCE** | FORUM

2 September 2022
Kristin Brandon
Head of Policy and Regulatory Affairs
Email: kristin.brandon@nzx.com

NZX Capital Raising Settings and Listing Options Targeted Review

Dear Kristin,

We welcome the opportunity to provide feedback on the NZX Capital Raising Settings and Listing Options Targeted Review (**Review**).

The New Zealand Corporate Governance Forum (**NZCGF**) is committed to promoting good corporate governance of New Zealand companies for the long-term health of the capital market. We believe that good governance improves company performance and increases shareholder value, which is a core focus for NZCGF members as custodians of public/client capital.

The Listing Rule settings and related market practices in respect of raising new equity capital have profound impacts on market efficiency and shareholder rights. As institutional investors, we are focused on ensuring there is appropriate protection of shareholder rights, whilst also enabling Issuers to raise capital in the most advantageous way for shareholders.

We are also conscious that stock exchanges are subject to competition for listings, and that it is important that NZX is an attractive exchange for Issuers to list (particularly as compared to ASX). However, as long-term investors, we also consider that this does not mean we support replicating settings in other markets which may erode market integrity and fairness over the longer term.

Our answers to the selected questions outlined in the Review are set out below. The NZCGF has also published the **attached** paper setting out its perspectives on secondary capital raisings (**Paper**), and this should be treated as part of our submission.

Our key observations are:

- ANREOs can result in significant value transfers from existing shareholders (who do not subscribe) to other market participants and material adverse impacts on shareholder rights.
- In our view NZX has not provided sufficient rationale as to the need for, or benefits of, ANREOs as an 'as of right' offer structure. The fact they are prevalent in Australia is not a sufficient reason to allow ANREOs in NZ.
- We can envisage that there are certain extreme cases where an ANREO may be appropriate (i.e. a distressed capital raising of substantial scale where underwriting is otherwise unavailable). However, we consider it would be better to cater for these situations with a more developed waiver pathway for ANREOs to ensure there is appropriate rigour around when they are used and reflecting that they should not be mainstream.
- We encourage NZX to continue to innovate and refine offer timetables to ensure AREO and 'traditional' rights issues (**PRR Offers**) are as efficient and attractive as possible, as compared to other alternatives that are less consistent with shareholder rights.

- The Listing Rules and/or NZX Corporate Governance Code should more clearly define the key principle of fairness in secondary equity capital raisings, which we consider to be:
    - that rights to subscribe for new secondary capital belong to the existing shareholders - for them to exercise or renounce for value; and
    - the only justification for not adopting a PRR Offer is that there is a clear case that the alternate structure (e.g. placement / perhaps with SPP, or ANREO) provides greater benefits to the Issuer (i.e. all shareholders as a group).
- It is critical that Issuers provide fulsome disclosure as to the choice of offer, including as to the justification and analysis supporting the alternate structure. This is a key focus in our Paper[1], which sets out our recommended disclosures.
- Without significant evidence and analysis as to the anticipated benefits of SPACs and dual class share structures, we do not support these in the NZ market. Dual share class structures contradict the fundamental governance premise of one-share-one-vote, and in our experience impede investors from most-effectively engaging with issuers on ESG matters.

Please note that individual Forum members may make their own submissions directly to NZX, and this submission will be published on our website (www.nzcgf.org.nz) and Linkedin page.

Yours sincerely,

Sam Porath
Chair
NZ Corporate Governance Forum

[1] NZCGF capital raisings white paper - attached

<table>
<tr><th>#</th><th>Question</th><th>Response</th></tr>
<tr><td>1</td><td>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.</td><td>We support flexibility (but not a requirement) for boards to allow downside price protection within an accelerated offer / AREO.

However, this should not be compulsory. The downside protection carries a value, and boards should be comfortable that the value that is being provided to retail shareholders subscribing in the later 'component' of the offer is supported by benefits to the offer structure as a whole (e.g. via a reduced underwriting fee).

We also note that this amendment would put AREOs on a more even regulatory footing with placements/SPPs (which can already include downside price protection), and this is desirable in that it makes the pro-rata offer structure comparatively more attractive.</td></tr>
<tr><td>2</td><td>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?</td><td>No. We do not believe NZX has provided sufficient principled evidence to justify enabling ANREOS 'as of right'.

• The fact that ANREOs are permitted in Australia is not in and of itself a reason they should be adopted in NZ;

• The commentary around tighter discount appears to be based off a small sample, and as we note in the Paper (and as NZX notes in the Consultation), the size of the discount does not necessarily matter to the same extent in a PRR Offer as existing shareholders can recognise the value of that discount in an efficient market. In contrast, in an ANREO the discount represents a value that is transferred from existing shareholders who do not participate to other parties;

• The Listing Rule that currently enables pro-rata renounceable offers to (as NZX has framed it) replicate ANREO characteristics by not quoting the rights can be addressed by the change proposed under question 3 below. This doesn't necessitate the use of ANREOs.

We agree that there are certain specified extreme cases where an ANREO may be appropriate - i.e. a distressed capital raising of a scale that exceeds placement capacity, where shareholder approval cannot be sought and underwriting is otherwise unavailable under a PRR Offer.

However, we consider this situation would be better addressed by NZX establishing a more developed waiver pathway for ANREOs with clear guidance to ensure there is appropriate rigour around the choice of offer.</td></tr>
</table>

3	Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?	Yes. This reflects the fundamental principle of fairness that we outline in the covering letter and Paper.
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?	We support the objective of condensing timeframes for PRR Offers to make them more efficient and attractive relative to placements/SPPs. We will leave it to NZX and those representing retail shareholders to confirm whether this proposal would have any adverse impacts on smaller shareholders.
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.	PRRs: No - this should not be a requirement. For PRR Offers any shortfall only arises after existing shareholders have had a first opportunity to participate. The board should be free to determine the shortfall allocation policy to derive the best outcome for the company / its shareholders and imposing a firm requirement of this nature can constrain the board's ability to optimise other important features of the offer such as underwriting cost or ability to attract quality new investors to the register. ANREOs: Some members would mandate a pro-rata allocation of the shortfall based on holdings at record date. Other have less strong views.
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?	We are open to increasing the limit, but any increase should be supported by analysis so that the quantum is calibrated so that it is consistent with approximating pro-rata outcomes (but not too large to be distortionary, given that SPPs are non-pro rata). In making any change, NZX should be conscious that adjustments may inadvertently make non-pro rata structures more attractive relative to PRR Offers. We also suggest that NZX considers a dollar cap above which the allocation under the SPP will not exceed the investor's notional pro-rata entitlement.
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?	As with question 6, we would like to see supporting analysis before there is any increase to the SPP capacity. Absent such analysis, we would prefer for issuers to source any incremental capacity required for an SPP (i.e. beyond the 5% limit) from their 15% placement capacity.

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?	We support flexibility (but not a requirement), with the rationale being substantially the same as set out in the response to question 1.
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?	Yes.
10	Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?	Yes.
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) 16 • 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	We are generally supportive of further disclosures around underwriting. Whilst acknowledging we have a conflict in this area (as Forum members may sub-underwrite) we suggest that disclosure of the identity of specific sub-underwriters is not necessary or appropriate. Substantial product holder filing rules already require positions to be disclosed in certain circumstances, and where sub-underwriters don't have a direct relationship with the issuer or any material influence over the choice and structure of offer the case for the disclosure of their identity is not clear to us.

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: o 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. o 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. o 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.	As set out in our Paper, quality and timely disclosures are essential to support good governance and allow shareholders to assess and hold Boards to account for the choice of offer structure. We have set out a recommended list of matters that issuers should report in our Paper.
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.	We agree this is a sensible proposal.

14	NZX seeks feedback on whether additional information and guidance would assist issuers with their considerations in relation to capital raising.	We support this proposal and would like to see specific discussion on the principles around recognising shareholder rights and maximising shareholder value that we have outlined in the covering letter and Paper.
15	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?	We do not see a strong need or demand for SPAC listings in the NZ market.
16	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?	We do not see a strong need or reason to adopt dual class share structures in NZ. Such structures are fundamentally inconsistent with the important principle of one-share-one-vote. Members of the Forum have practical experience that dual class structures can impede shareholder engagement on important ESG matters which we would be happy to discuss further with NZX.
17	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)?	Not applicable.

NZ
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Capital Raisings: The Forum's Perspective

There has been considerable discussion in the media and among market participants regarding the merits and comparative fairness of different capital raising structures.

The NZ Corporate Governance Forum[1] (the **Forum**) has followed these discussions with interest and commends NZX for its ongoing review into capital raising practices.

Capital raising structures generate rights to subscribe for new shares at a fixed price. Either those rights are allocated to existing shareholders to exercise or sell, or the rights (or the value of the rights) are allocated by the issuer. As such, the choice of offer structure can result in value being transferred from shareholders who are not given the opportunity to participate, or cannot or do not participate, to other parties.

The rights of institutional investors such as Forum members are generally not prejudiced by the choice of offer structures. This is because they are well-positioned to participate and to ensure they receive and exercise at least their pro-rata allocations. However, that is not the case for all shareholders and important market integrity issues may arise depending on the choice of structure. The Forum is mindful that a key responsibility of institutional investors is to monitor the performance of Issuers and Boards in governance decisions, such as the choice of offer structure.

Choice of Offer

Board decisions on capital raising structures are complex and challenging. The choice of the 'optimal structure' depends on a myriad of nuanced factors including business prospects, time constraints, perception of risk, capital structure, the ownership composition (major supportive or non-supportive shareholders versus a more distributed register) and the availability of underwriting.

Moreover, many Boards will only encounter capital raising transactions infrequently, meaning it can be difficult to maintain deep experience on the various considerations that impact offer outcomes.

[1] The New Zealand Corporate Governance Forum is committed to promoting good corporate governance within NZ companies for the long-term health of the NZ capital market. The Forum's members are institutional investors with significant investment in NZ listed companies.

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As such, the Forum considers that Issuers should:

- support Boards by seeking expert independent advice on capital raising decisions; and,
- encourage director groups to provide focused training on capital raising structures.

Ideally, Issuers should always first consider whether shareholder approval can and should be sought in respect of a significant offer of equity securities. The Forum's guidelines maintain that *"listed companies should not be able to materially dilute shareholders without their approval"* and should significant dilution occur, the Forum considers that the Issuer should provide a full explanation of share issuance regardless of the size of the capital raising.

It is important for Boards to establish and refer to fundamental principles. In our view, the key principle is clear: shareholders are the owners of the Issuer and the rights to subscribe new capital in a capital raising should belong to them, either to be exercised or sold. The capital raising structure that is most consistent with this principle is a pro-rata offering, and ideally a "traditional" pro-rata, quoted, renounceable rights offer. Offer structures such as "placements" or "ANREOs[2]" may not give all existing shareholders the rights to participate proportionately, or the ability to sell their rights to participate. These structures may result in a direct value transfer to any new investors or, if underwritten, the offer underwriters.

The Forum's view is solidly supported by Recommendation 8.4 of the NZX Corporate Governance Code (the **Code**):

> *"If seeking additional equity capital, Issuers of quoted equity securities should offer further equity securities to existing equity security holders of the same class on a pro-rata basis, and on no less favourable terms, before further equity securities are offered to other investors."*[3]

The Forum recognises that under some conditions Issuers should raise capital using non-pro-rata methods: for example, when a traditional pro-rata capital raising is not possible, or a non-traditional raise is materially less expensive.

In the Forum's opinion, the current debate and tension have arisen from Issuer practice. Despite Recommendation 8.4 of the Code, prevailing market practice suggests Boards and Issuers prefer non-pro-rata offer structures, most commonly a placement combined with a share purchase plan (SPP). While Issuers are generally focused on selecting structures which closely replicate pro-rata allocations, there are inevitably groups of shareholders who cannot or do not participate (e.g. overseas holders, less sophisticated or disadvantaged shareholders)[4].

The Forum's view is that those shareholders who, through the choice of offer structure, do not receive the value of their rights to participate, should receive a full and timely justification that their cost is compensated by the benefit to the Issuer (i.e. all shareholders).

The Forum considers that Recommendation 8.4 of the Code was intended to provide this justification. Our view is that many explanations have not provided shareholders with enough information to fully assess the merits of the capital raising decision.

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[2] Accelerated Non-Renounceable Entitlement Offers

[3] NZX Listing Rules, *Appendix 1 - NZX Corporate Governance Code*, (10 December 2020), p 32 https://www.nzx.com/regulation/nzx-rules-guidance/corporate-governance-code

[4] See further information on this in the Forum's submission on the Code at https://www.nzcgf.org.nz/assets/Uploads/pdf/20220128-NZX-Corporate-Governance-Code-Review-2021-final.pdf

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Transparency is key

The Forum would like to see greater disclosure concerning equity capital raising decisions, including when Issuers explain non-compliance with Recommendation 8.4. Boards should consider enhanced disclosure on the following:

- The reason for the decision to not follow Recommendation 8.4, including details of the benefits of the chosen offer structure as compared to a traditional pro-rata offer. For instance, if lower cost is the reason, the details should include a clear comparison of the cost of the non-pro-rata issue with the equivalent pro-rata issue[5];
- The process to set the placement/issue price and the objectives of the allocation process, details of the allocation framework and which firms or groups influenced decisions;
- The groups of shareholders which were disadvantaged by the choice of structure (e.g. who could not participate) and the measures taken to mitigate those disadvantages;
- If an SPP was used, was the SPP fully subscribed? If the SPP was scaled how was the scaling done and if done on shares cum issue, the effective dilution after the scaling for the investors that were scaled; and,
- The percentage of shares held by shareholders which were diluted and the change in the registry composition resulting from the capital raising, including the number of shares allocated to new shareholders, the underwriters and sub-underwriters.

Disclosure should be made as close as possible to the offer date (c.f. the information is often stale if disclosed in the ensuing annual report which is the current requirement). While many of the disclosures can be made upon launching the offer, others would need to be made once the offer outcomes are known.

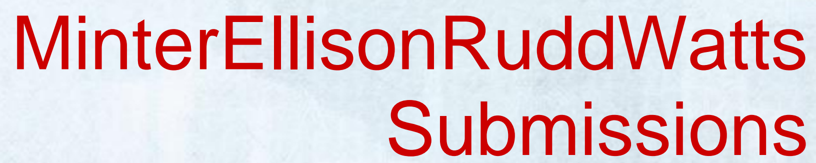
In summary

Board decisions on capital raising structures are complex and challenging, and we encourage focused training on capital raising structures. Many Boards will only encounter capital raising transactions infrequently. Therefore, the Forum considers that Issuers should seek expert independent advice on capital raising decisions and encourage director groups to provide focused training on capital raising structures.

In our view, the key principle concerning equity capital raisings is that shareholders are the owners of the Issuer and the rights to subscribe to new capital should belong to them, either to be exercised or sold. The capital raising structure that is most consistent with this principle is a pro-rata offering, and ideally a "traditional" pro-rata, quoted, renounceable rights offer. However, in certain circumstances Issuers can, and sometimes should, legitimately raise capital using non-pro-rata methods.

The Forum's view is that those shareholders who do not receive the value of their rights to participate through the choice of offer, should receive a full and timely justification that their cost is compensated by the benefit to the Issuer, i.e. to all shareholders. Recommendation 8.4 of the Code was intended to provide this justification and the Forum is concerned that many explanations have not provided shareholders with enough information to fully assess the merits of the capital raising decision.

[5] The offer costs will include external adviser and lead manager costs which will differ depending on the terms of the offer. Issuers tend to focus on the relative discount to market price, which may be less for a non-pro-rata offer. However, this may be overly simplistic, in that for a pro-rata offer the discount will not impact existing shareholders in the same manner since they can sell rights, whereas in a non-pro-rata offer the discount results in direct dilution/cost to non-participating shareholders.



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MinterEllisonRuddWatts

Consultation on the NZX Corporate Governance Code

1. **Overview**

1.1 MinterEllisonRuddWatts appreciates the opportunity to make submissions on NZX's Capital Raising Settings and Listing Options consultation.

1.2 We have set out below our submissions on the matters in the NZX's Consultation Paper, dated 27 July 2022.

1.3 We would be happy to discuss further any of the submissions made in this document. Any queries should be directed to:

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Question	Answer
Part A: NZX Capital Raising Settings	
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.	We assume this question is aimed at placements and some form of rights offer given the question below on SPPs. We agree with this proposal as we do not see such a requirement as a change to prevailing practice given that a placement normally sets the price for the wider offer. Similarly, within a multi-component rights offer, the price between the components will normally be the same.
2. Noting that: a. ASX permits the use of ANREOs provided dilution limits are in place; b. Structures have recently been employed which mimic ANREOs, but have not required dilution limits; and that c. We are proposing enhanced disclosure requirements: Should NZX's rules allow ANREOs as a permitted pro rata offer with a 1:1 offer limit?	We consider that it is appropriate to permit ANREOs, subject to the protections proposed, particularly because ASX listed issuers are able to use them and NZX listed issuers should not be comparatively disadvantaged. With respect to the proposed amendments to the Listing Rules: • we query whether the change in Rule 4.4.2(b) is intended? In particular, the use of the term Renounceable suggests that the Rights under an AREO must be tradeable, which is not always the case, and therefore the AREO would need to comply with Rule 4.4.2(c). • we suggest that proposed Rule 4.4.2(c)(ii)(B) is amended so that the effect that is required to be

Question	Answer
	disclosed is specified, namely that there will be dilution and the inability to sell Rights.
3. Should NZX require a "liquidity event" in the form of either (or both) a shortfall bookbuild or rights quotation for a renounceable structure?	We consider that this is appropriate as otherwise, in our view, retail investors would not have a realistic ability to realise value. We would also suggest amending the proposed definition of "Renounceable" so that the same language is used as in Rule 4.4.2(b) for consistency.
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?	We do not see a compelling reason to require the 5-day period for vanilla rights offers or SPPs, and we support the option for existing SPP disclosure following the record date. Ultimately, a discounted share issue should benefit existing shareholders and not those seeking to buy-in simply for the purpose of acquiring cheaper shares.
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.	We agree with this requirement as it is consistent with the policy behind a pro-rata capital raising. Where an offer is structured so that the issuer's existing shareholders can maintain their existing percentage holding, it follows that those same persons should be given the first chance to purchase a shortfall. We also suggest adding to the proposed definition of "Shortfall" a provision to capture disregarded fractional entitlements so that there is consistency with Rule 4.4.1(a).

Question	Answer
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?	We consider that this is appropriate, particularly as this would ultimately benefit retail shareholders. With respect to scaling, we agree with NZX's proposal, provided that there is an exception to allow for non pro-rata scaling for shareholders that the issuer reasonably considers are splitting their shareholdings or otherwise trying to apply for more than the $50,000 entitlement.
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?	Yes, we agree with this increase on the basis proposed.
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?	We consider that this is appropriate and, in any event, this is common market practice for placement and SPP structures.
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?	We agree that the record date makes most sense and in practice this is what is done.

Question	Answer
10. Should we allow issuers to seek ratification of issues made under earlier SPPs as is permitted currently for placements?	We consider that this is appropriate, though given that all shareholders must be offered a chance to participate, the same restrictions on voting applicable to placement ratifications should not apply here. As a general point, we query if the substance of the definition of "Share Purchase Plan" should be moved into the body of Listing Rule 4 (maybe as a new Listing Rule 4.4.4 or 4.4A), given that the definition is now relatively long and has several operative components.
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): a. Whether a joint lead manager (JLM) has been appointed b. If so, the name(s) of the JLM(s) c. The fees payable to the JLM(s) d. Whether the issue will be underwritten e. If applicable, the name(s) of the underwriter f. The extent of the underwriting	In our view, the key disclosure requirement with respect to underwriting should be the material circumstances where the underwriting arrangements may be terminated or amended. While this may be material information that should be disclosed in any event, the requirement should be formalised. As part of that disclosure the identity of the underwriter / JLM would be disclosed, together with the extent of underwriting (which would also be disclosable material information). However, we do not see a compelling reasoning to require disclosure about sub-underwriters given that they normally contract with the underwriter itself and not the issuer (with the underwriter normally paying their fees). To the extent that sub-underwriting failing reduces the underwriters' obligations, then that would be a disclosure under the preceding paragraph. Finally, with respect to fees, we do not see a compelling reason to single out this transaction cost as opposed to others. In our view, the current practice of the disclosure of transaction costs

Question	Answer
g. The fees to be paid to the underwriters h. Whether the issue will be sub-underwritten i. If applicable, the name(s) of the sub-underwriters j. The fees paid to the sub-underwriters k. The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated	in the fund uses section of investor presentations provides sufficient disclosure.
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 5 above, within the offer document for a pro rata issue. b. Scaling policies for SPPs, Rights issues and Accelerated Offers. c. Placements - to disclose: i. 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	We respond to each of the suggested disclosures below: • **Pro rata issues:** the form of this disclosure will in part depend on whether existing shareholder priority is a requirement. However, we agree with this so that it is clear the basis on which a shortfall will be allocated. • **Scaling policies:** we agree with this addition for SPPs, although we don't think anything specific is required other than specifying that scaling will occur pro-rata to the record date per the updated Listing Rule. With respect to rights issues and accelerated offers, we query whether this would just be the shortfall policy? • **Placements:** we agree with item (i) given that this disclosure would need to be made on launch in any event or as part of the annual report disclosure against the NZX Corporate Governance Code. We also agree with item (iii) as apart from consistency with ASX

Question	Answer
or an SPP, whether Related Parties are eligible to participate in the placement and details of any escrowed shares issued in the placement. ii. 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. iii. 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.	disclosure, we see this as consistent with pro-rata shortfall policy disclosures. However, in relation to (ii) while we agree with the disclosure in the Corporate Action Notice and the launch announcement, we do not consider that this should be required in other documentation relating to the placement as we do not see the purpose that it would serve. • **ANREO:** we agree with this as the disclosure would be required in the annual report disclosure against the NZX Corporate Governance Code in any event. Apart from the above, as a general comment to the draft Corporate Action Notice, we suggest that the external approvals disclosure just refers to the disclosure of the conditions to the corporate action in question, as reference to external approvals may be ambiguous.
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	We see this as a consequential enforcement power following on from the above requirements.

Question	Answer
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.	We suggest that guidance is consulted on in relation to the content of allocation policy disclosure and the detail expected for disclosure of the reasoning for not choosing a pro-rata offer.
Part B: Listing Options	
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?	Given the low interest in the New Zealand market for these, and that market demand for them overseas has fallen this year, we do not consider that there is a need to change the Listing Rules to facilitate SPAC listings. In our view, a guidance note specifying NZX's approach should be sufficient, and we would suggest that the protections identified in the consultation paper are included.
2. 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?	As with the above, we would suggest that in the first instance a guidance note on listing dual class structures is used as opposed to a Listing Rule amendment.
3. 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	N/A.

Question	Answer
convert to a standard governance model (for example, after 5 or 10 years)?	

13 September 2022

Head of Policy and Regulatory Affairs
NZX

Attention: Kristin Brandon

By email: policy@nzx.com

Dear Ms Brandon

NZX's Capital Raising Settings and Listing Options: Targeted Review

We refer to the consultation paper entitled NZX Capital Raising Settings and Listing Options (**Consultation Paper**) published 27 July 2022.

The Australian Financial Markets Association (**AFMA**) welcomes the opportunity to comment on the proposed changes to the NZX Listing Rules outlined in the Consultation Paper. We thank you for allowing us additional time to respond.

Given the close linkage between the equity capital markets in Australia and New Zealand, AFMA is concerned to ensure a level of cohesion between the regulation of the two markets (where that makes sense), particularly in the context of dual-listed entities on the NZX and ASX.

As a general note, our members agree with the NZX that the boards of issuers play a critical role determining what is in the best interests of the entity when it comes to raising equity capital. We also agree that they should have the flexibility to use various means of capital raising structure. This has served equity capital markets well both in Australia and New Zealand, including during the disruptions brought on by the COVID-19 pandemic. We believe the maintenance of this flexibility should be an influential factor in NZX's decision with respect to revising the NZX's capital raising settings. It is consistent with the submissions that AFMA has made to the ASX in responding to the recent ASX consultation on proposed enhanced to the ASX Listing Rules. A copy of the submission is available via this link: **AFMA ASX Submission**.

While AFMA does not propose to respond in detail to each question, the members believe that it is important to respond to each of the following:

Australian Financial Markets Association
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Q2. Should NZX's rules allow ANDREOs as a permitted pro rata offer with a 1:1 limit?

We support this proposal.

The ANREO structure is a useful alternative for boards to consider, particularly, in circumstances where markets may be volatile and underwriting certainty is required. The structure has been critical in allowing boards to respond efficiently and effectively, when necessary. For example, this may be to address an urgent funding need or secure an important acquisition.

The fact that an ANREO is selected as the capital raising mechanism does not abrogate the need of boards, with the assistance of their advisers, to consider the impact on the issuance on the entity, including its existing security-holders, and the need to assess the inclusion of a SPP or other structural feature to mitigate the dilutionary impact on those who do not have the opportunity to participate in the institutional bookbuild. In this respect, existing securityholders have the existing protection afforded by general law and statutory director duties and obligations.

We also consider that a closer alignment between the NZX Listing Rules and ASX Listing Rules with respect to the treatment of ANREOs would be beneficial for dual-listed issuers.

Q5. 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.

We do not support this proposal.

Existing shareholders are already entitled to participate on a pro rata basis. The allocation of any shortfall should be determined by boards and their advisers. A proposal of this nature is likely to limit the ability of listed entities to attract new investors, fundamentally making capital markets less efficient.

Q11. 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.**

  We have no objection to this proposal, subject to our response as it relates to sub-underwriting disclosure.

  We do not think that the proposal to disclose sub-underwriting details should be prescribed. This could discourage the willingness of sub-underwriters to participate in capital raisings, which accordingly, could negatively affect the cost and ability of listed entities to raise equity capital. Instead of a blanket proposal, the members believe it would be relevant to focus on disclosure of sub-underwriting arrangements when related parties, associates or substantial security-holders are involved (this is also consistent with the ASX Listing Rules).

Question 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 [5] above, within the offer document for a pro rata issue.

We do not support this proposal.

We do not think that the disclosure of the shortfall allocation policy in connection with a pro-rata issue is beneficial, in that it could restrict the ability of boards and their advisors to respond flexibly to a particular issue.

If the NZX believes that it is important in the context of investor transparency, then we think that it should be sufficient if the policy was framed in general terms.

(b) Question 12(b). Scaling policies for SPPs, Rights issues and Accelerated Offers.

We do not support this proposal.

Disclosure of scaling policies in offering documentation may unduly restrict boards in deciding about how to deal with demand in the context of a particular issue and which may not be well understood until after launch. Such a decision is likely to be best made once there is an understanding of investor demand and participation in the issue. AFMA does not object to a requirement to disclose, in general terms, the allocation decision at the completion of each relevant component of the issue.

(c) Question 12(c). Placements - to disclose:

a. **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.**

   We have no objection to this proposal.

b. 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.

We do not support this proposal.

We refer you to AFMA's response on page 5 of the AFMA Submission:

> *Fundamentally, Issuers and their advisors, require flexibility regarding the allocation of securities in placements to achieve the best allocation outcomes to a mix of both existing and new investors. Issuers should not be required to disclose upon initial announcement of a placement whether existing holders will be entitled to participate and, if so, on what basis. The very nature of a placement means that no securityholder is entitled to participate (unlike a pro rata issue). When Issuers make a placement they need flexibility to achieve allocation outcomes which best suit the interests of the Issuer and meet the objectives of the placement other than raising capital. How allocations are made is very much influenced by demand for securities in the placement which is not understood until after the placement has launched. The circumstances of the transaction which exist prior to launch often change during execution, and Issuers need flexibility to adapt and make allocations which are in their best interests.*
>
> *It is unhelpful for Issuers attempting to raise capital in an efficient manner, in a competitive environment and at the best possible pricing to be required to disclose whether existing securityholders are entitled to participate in a placement and, if so, on what basis before the Issuer is able to fully understand what allocation outcomes in the context of available demand best serve the Issuer. Further, prescribing upfront the entitlement of existing securityholders to participate in a placement may be problematic for Issuers who wish to have the placement underwritten as any fetter on how allocations are made under the placement increases underwriting risk (and therefore underwriting fees). It will also be problematic if securityholders who wish to participate in the placement do not meet any on-boarding or required credit approval requirements of the underwriter.*
>
> *Issuers already take into account participation by those of its existing security holders who are eligible to participate in placements as they seek to act in the best interests of securityholders. Ultimately, the Board is accountable to its existing securityholders.*
>
> *It is market practice for existing eligible securityholders that bid for securities in a placement to be allocated to a minimum of their pro rata, should they bid for this quantum of stock. In our experience, Issuers commonly allocate securities to existing securityholders in excess of their pro rata if that is in the best interests of the Issuer and the success of the placement, taking into account multiple factors such as overall demand, past investor behaviour, bid size relative to the size of the placement and the timing of the bid in the process.*

The current practice of Issuers disclosing general information regarding the allocation of placements post offering, together with substantial holder notices, provides a level of detail to the market required by investors.

c. **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).**

We do not support this proposal.

We do not agree with the requirement for this disclosure as it acts as a constraint on the flexibility of boards and their advisors to determine how to best allocate securities in connection with an issue. It can imply that anything other than a pro rata allocation is deficient. As we have noted above, there are many reasons why a placement may be utilised, including, expanding the register base, speed to market and funding certainty. Existing shareholders are protected not only through the application of director duties and obligations, but also the natural ceiling that applies to a placement under the NZX Listing Rules.

(d) Question 12(d). Reasons for selecting an ANREO structure

We do not support this proposal.

As we have set out above, the decision to adopt an ANREO structure will often necessitate the balancing of various factors, including market conditions, use of proceeds, desire to expand the security-holder register, jurisdictional related issues and costs of facilitating a capital raising, among other matters. Directors already have a duty to consider the interests of existing securityholders in the context of the capital raising objectives.

It may be difficult to express these considerations in an appropriate way and in a way that does not reveal commercially sensitive information. It also suggests that there is something inherently different about an ANREO structure as opposed to some other structure. It may also expose the board to increased risk of liability. For these reasons, we do not think that NZ RegCo should introduced this change.

Question 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.

We do not support this proposal.

This information is commercially sensitive to the issuer and investors. Furthermore, such a requirement may dissuade investor participation if it is anticipated that such schedules will be provided as a routine matter to NZ RegCo. We also refer you to the comments on page 7 of the AFMA ASX Submission:

As previously indicated, AFMA is not in favour of the proposed requirement for Issuers to provide ASX, on ASX's request, with detailed allocation spreadsheets.

The basis of allocation outcomes determined by Issuers is commercially sensitive information to both the Issuer and investing securityholders and new investors. If there are circumstances where certain securityholders feel aggrieved by an allocation outcome under a particular placement then they should approach ASIC to use its powers under the Corporations Act to seek relevant information and to take appropriate action against the Issuer. Nevertheless, AFMA welcomes that such information will only need to be provided on the request of ASX and not for every material placement.

Part B: Listing Options

We note the preliminary feedback sought on special purpose acquisition companies and dual class shares. We believe that both matters are worthy of detailed consideration in their own right. They raise complex questions that our members believe would warrant separate consultation and engagement. We recommend that any change in relation to these matters should only be undertaken following a separate consultation and engagement process.

Please contact David Love either on 02 9776 7995 or by email dlove@afma.com.au in regard to this letter.

Yours sincerely

David Love
General Counsel & International Adviser