Guidance Note

Capital Raising

15 January 2024

Under Rule 9.15.1 of the NZX Listing Rules (**Rules**), NZX Limited (**NZX**) may act by and through NZX Regulation Limited (**NZ RegCo**) in performing any function or discharging any power set out in the Rules. References in this guidance note to NZX therefore also include NZ RegCo in relation to any regulatory activity or discretion.

Contents

1. Introduction

The Rules outline minimum requirements in relation to capital raising to ensure there is a baseline of protections for holders of Equity securities of Issuers in New Zealand. The Rules are supported by recommendations seeking to promote good corporate governance contained in the Code, recognising that Boards are required to act in the best interests of the Issuer and its holders of Equity securities generally. Capital raisings are a key area of focus and the Rules complement other legal requirements, such as the Companies Act 1993.

A range of structures can be used by Issuers to raise capital. A general description of the most common structures is provided below. The Rules do not seek to prescribe specific structures because this will be a matter for Boards to determine. Instead, the Rules place general restrictions and obligations on Issuers to protect the interests of holders of Equity securities when undertaking capital change transactions.

The Rules reflect a general principle that, as owners of the Issuer, existing holders of Equity Securities should be offered the opportunity to participate in capital raisings on a pro-rata basis (i.e., to participate in proportion to their existing holdings), unless they have approved otherwise, or the issue is otherwise permitted under the Rules. This principle is built into most recognised listing regimes and is a feature of the Rules as explained below. This is also reflected in recommendation 8.4 of the Code which recommends on a "comply or explain" basis that Issuers should conduct capital raisings on a pro rata basis. Issuers must explain 'why' in their annual reports if they have elected not to do so.

The Rules permit pro rata Renounceable offers without approval of holders of Equity Securities and without any limit on the amount of capital that can be raised under such offers. These structures recognise the property right of existing holders of Equity Securities, because those holders who choose not to participate in an offer can still potentially realise some value from the transaction. NZX has also permitted non-Renounceable offers without approval of the holders of Equity Securities subject to certain limits and investor protections. These additional measures recognise that such structures have greater potential to adversely affect the interests of existing holders of Equity Securities who do not or cannot participate in such offers.

Non-pro rata structures by their nature have the potential to dilute existing securityholder interests so there are limits under the Rules on the extent to which these structures can be used without approval of the holders of Equity Securities.

1.1 Objectives of this guidance note

The guidance note has the following objectives:

i. Provide an additional resource for Issuers considering undertaking a capital raising, by providing basic information that Issuers may wish to consider in relation to capital raising structures.

ii. Identify key considerations for Issuers when selecting capital raising structures, including to highlight investor concerns. This information is not intended to be a substitute for independent external advice. However, it may assist Issuers who are less experienced in capital raising and help to identify questions which Boards should ask advisers.

iii. Encourage Issuers to seek expert investment banking or corporate finance advice in relation to capital raising decisions, while expert advice is not required under the Rules, it is strongly encouraged for issuers undertaking accelerated non-Renounceable entitlement offers (**ANREOs**), to support the ANREO Disclosures, discussed in section 4.3.

iv. Provide guidance in relation to Rule requirements. In particular, to provide guidance on the disclosure requirements relating to capital raising transactions.

1.2 Explanation of the different offer structures and terminology

We have outlined below for context some basic information on the most common offer structures:

Non-pro rata structures

- **Placement –** where Equity Securities are issued to either new or existing investors at an agreed price (which may be determined by the Issuer prior to the placement or determined through a “bookbuild” or similar process).
- **Share Purchase Plan (SPP)** – an offer to existing holders of Equity Securities to subscribe for Equity Securities up to a monetary limit per holder at an agreed price which must not exceed the price paid for Equity Securities by an investor in any other offer of Equity Securities announced together, or made in connection with the SPP (such as a placement).

Pro rata structures

- **Traditional or ‘vanilla’ Rights issue –** Renounceable Rights are issued to existing holders of Equity Securities in proportion to their existing holdings, allowing holders to exercise such Rights to be issued new Equity Securities. The Rights are Renounceable. An Issuer may apply for the Rights to be Quoted and tradeable on-market or there may be a Shortfall bookbuild, or a combination of both, allowing existing holders the opportunity to realise some value if they choose not to (or are ineligible to) participate in the offer. There is no restriction on the price at which Equity Securities may be offered under a traditional or ‘vanilla’ Rights issue.
- **Accelerated renounceable entitlement offer (AREO)** – an AREO is similar to a traditional Rights issue, but will usually provide for the offer of Equity Securities to institutional investors to be accelerated ahead of retail investors. In addition to being pro rata, the benefit of this structure is that existing holders of Equity Securities who choose

not to take up their Rights have the potential to sell those Rights through a renunciation feature or potentially receive value through a bookbuild process if a premium is achieved. The price of the Equity Securities offered under the Institutional Entitlement Offer must not be less than the price at which Equity Securities are offered in any related Retail Entitlement Offer. There are some other forms of accelerated renounceable entitlement offers. Simultaneous accelerated renounceable entitlement offers (**SAREOs**), where there is no institutional bookbuild and instead a single Shortfall bookbuild at the end of the Retail Entitlement Offer, and pro-rata accelerated institutional, tradable retail entitlement offers (**PAITREOs**), where Quotation is sought for trading of the Rights of eligible retail holders of Equity Securities (and a Shortfall bookbuild at the end of the Retail Entitlement Offer for any Rights not taken up), are other forms of accelerated renounceable offers accepted under the Rules. These structures would also fall within the definition of an Accelerated Offer under the Rules.

- **Accelerated non-Renounceable entitlement offer (ANREO)** – the key difference between an ANREO and AREO is that the Rights are non-Renounceable. Existing holders of Equity Securities will not have the potential to realise value if they choose not to (or are ineligible to) take up their Rights because the Rights are non-Renounceable. The Rights are not Quoted or traded and there is generally no Shortfall bookbuild, with any Shortfall being allocated to underwriters and sub-underwriters. If a Shortfall bookbuild is included, the proceeds of any premium obtained will go to the Issuer instead of existing non-participating holders of Equity Securities. As with an AREO, the price of the Equity Securities offered under the Institutional Entitlement Offer must not be less than the price at which Equity Securities are offered in any related Retail Entitlement Offer.

The above is not intended to be an exhaustive explanation. Offer structures can be used in combination e.g., a placement and SPP. The importance of the relative features of each structure will also depend on the specific offer terms and other structuring details, as well as the purpose for which capital is being raised.

The section below includes a discussion of the key considerations when selecting a structure and the trade-offs between different structures.

NZ RegCo has also published a range of Practice Notes which outline the features, timing requirements and considerations for different offer structures. These Practice Notes are available here.

It is worth noting that Issuers may also issue Equity Securities without the approval of holders of Equity Securities in a range of other scenarios, such as issues to employees, under a dividend reinvestment plan or on conversion of other Financial Products. This guidance note is focused on considerations for undertaking capital raisings of the nature outlined above and does not seek to address the other scenarios permitted under the Rules.

2. Key considerations when selecting a structure

2.1 Considering the impact on holders of Equity Securities

Offer structures affect existing retail, institutional and foreign holders of Equity Securities differently. In selecting a structure for a capital raising, Directors should have a clear understanding of the impact of their chosen structure on their investor base.

A key principle of fairness , is that holders of Equity Securities are the owners of the Issuer and the Rights to subscribe for new capital in a capital raising should belong to them, either to be exercised or sold. Placements and ANREOs do not reflect this key principle, so investors should receive a timely justification as to why the impact on holders of Equity Securities is compensated by the benefits to the Issuer (effectively all holders of Equity Securities) of such offer structure.

Some relevant considerations from an investor perspective are discussed below.

A placement to institutional investors and brokers on behalf of their retail clients (usually undertaken at a discount to the prevailing market price) will dilute any existing holders of Equity Securities that do not participate in the placement. The dilutive impact can be limited by offering pro rata participation in the placement to existing institutional holders of Equity Securities, and also by combining a placement with an SPP. In addition, Issuers may allow brokers to participate on behalf of their retail clients, which may assist in limiting the number of holders of Equity Securities who may be diluted by the placement.

However, the $50,000 limit for an SPP may mean that larger retail holders of Equity Securities may suffer some dilution as a result of the offer, even if they take up all of their Rights entitlement under the SPP, or if there is no placement in which they participate.

Given the longer offer period, underwritten Rights issues will generally be conducted at a larger discount to a placement. Despite the larger discount, which means that holders of Equity Securities will face the prospect of greater dilution if they do not take up their Rights, most investors generally prefer Rights issues because their pro rata structure is seen to be more equitable. Further, by structuring the Rights issue as Renounceable – whether as a ‘traditional’ or ‘vanilla’ Renounceable Rights issue (where Rights trading on NZX takes place and/or there is a Shortfall bookbuild) or as an AREO or PAITREO – an Issuer can provide an opportunity for holders of Equity Securities that do not participate to receive market value for their Rights. However, whether renouncing holders of Equity Securities receive any value will ultimately depend upon the strength of the price of the Issuer’s Equity Securities following announcement of the transaction.

2.2 Pricing and certainty considerations

Although making an entitlement offer Renounceable is desirable from the perspective of those holders of Equity Securities who do not (or cannot) participate in a Rights issue, an Issuer’s Board may need to consider the impact of making the offer Renounceable on other aspects of the offer – including the price at which Equity Securities are made available under the offer and the ability of the Issuer to secure underwriting and sub-underwriting commitments for the capital raising.

For example, there may be a reluctance on the part of underwriters to underwrite traditional Rights issues or the retail portions of accelerated Rights issues as they are not prepared to

accept the risk of market volatility over the extended offer period. Similarly, AREOs may not be favoured due to the longer exposure to market movements that the dual bookbuild structure of the AREO can create. Issuers may wish to consider an ANREO or placement (or a combination of both) in circumstances where sufficient underwriting support cannot otherwise be obtained for an offer and the Issuer requires certainty that the funds will be raised.
It may be that in certain situations tighter pricing (i.e. a smaller discount) can be achieved using either ANREOs or the combination of a placement and an SPP, although these benefits should be weighed against the stronger dilutive effect on non-participating shareholders of non-renounceable structures.

2.3 Timing considerations

The ability of companies to execute transactions in a timely manner is critical to the success of capital raisings especially during periods of market volatility. Placements have been preferred in circumstances where capital is required quickly (such as balance sheet repair, or to fund working capital needs) - as a placement can be conducted over a matter of hours.

There are also different approval requirements under the Rules depending on the structure selected and the size of the capital raise. For example, Boards will have more certainty that they can undertake an offer via a placement if it is below the 15% capacity limit because the approval of the holders of Equity Securities is not required under the Rules.

However, the ability of Issuers to undertake accelerated Rights issues enables Issuers to receive the proceeds from the institutional component of Rights issues, on a timetable that is similar to that for a placement. This has greatly enhanced the ability for companies to use the Rights issue structure – and provide all eligible shareholders with the opportunity to participate in a capital raising on equal terms – in circumstances where quick receipt of the proceeds of the raising is required.

2.4 Overall composition of the share register and impact on the after-market

Composition of the existing share register (for example, the proportion of institutional and retail, NZ and offshore, and custodial holdings) and the expected level of support from current shareholders is likely to impact the selection of offer structure.

Issuers may also have a broader objective of achieving a diverse share register as this generally helps improve liquidity, particularly for growing companies and newly Listed Issuers who list to gain better access to capital. A capital raising may be an opportunity to bring new shareholders onto the register via a meaningful position from the beginning (versus buying on market).

Also, when assessing the impact of a capital raising on existing shareholders, Boards should consider the impact of the transaction on the after-market for their shares. The allocation of shares under a capital raising is therefore important, as is clearly understanding who has the final say in making allocation decisions when engaging an investment bank to arrange or underwrite the capital raising. Issuers should set a clear allocation policy with their external advisors to assist in guiding allocation decisions and which may need to be disclosed for certain offer structures (as outlined below). Allocation of shares not taken up may be preferred (where possible) to investors who are likely to be medium to long term investors in the Issuer, rather than short term investors (such as hedge funds) who may be seeking to make a profit in the near term by immediately selling down the Equity Securities they acquire at a discount under a capital raising.

3. External advice

The technical and specialised nature of capital raising means that obtaining advice to support the process may be necessary. NZX recommends that Issuers obtain independent external advice, which is strongly recommended in respect of ANREOs. This will often be a combination of legal advice and corporate finance or investment banking advice. Issuers with a significant number of offshore investors should also consider seeking appropriate foreign legal advice as to the ability of the Issuer to extend the offer to investors outside New Zealand.

Seeking external assistance will allow a Board to receive advice on the relative merits of different transaction structures and for the Board to ask questions in relation to the potential impact of the different options on holders of Equity Securities. This will support informed decision making.

Boards may wish to ask questions based on the considerations noted in the preceding section of this paper.

Obtaining independent external advice is not a formal Rule requirement. However, in relation to the use of ANREO structures under Rule 4.4.2(c)(ii)(C), to recognise the concern from investors that these forms of offer can result in dilution for holders of Equity Securities who cannot or do not participate in the offer, Issuers must disclose within Offer Documents whether expert investment banking or corporate finance advice has been obtained on the merits of the non-Renounceable structure and, if so, to name the parties who provided the advice. This disclosure must be made in an Offer Document, as that term is defined in the Rules (which includes a full product disclosure statement and a Schedule 1 Offer Document) and in the context of an ANREO includes the booklet that an issuer provides to retail investors which contains the terms and conditions of the offer (see section 4.2.2 of this Guidance Note)[1]. It is strongly recommended that an Issuer seeks external advice in relation to the use of an ANREO structure.

While not required under the Rules, investors will find it useful to understand why an Issuer has chosen to proceed with an accelerated non-Renounceable structure if this was contrary to the advice received from the independent external adviser.

NZX does not propose to approve the party or parties who carry out the advisory role because it is something already routinely occurring in the market. Instead, the disclosure obligations provide the necessary transparency for investors to understand who has supported this aspect of the capital raising process. This guidance refers to a recommendation that this external advice is independent. The reasons for this should be obvious, to ensure that the Issuer can obtain impartial advice which considers the best interests of the Issuer as a whole and the interests of holders of Equity Securities generally, as noted below this is not intended to prevent the adviser from being involved in aspects of the capital raising transaction, although Issuers may prefer to seek advice from an independent advisory firm.

It is important to note that the disclosure obligation does not extend to confirming that the party providing the advice is independent, because NZX does not propose to play a role approving the parties who provide this service and does not consider itself in a suitable position to make assessments of independence. NZX considers that these are matters which Issuers and their

[1] In the event, that an Issuer prepares a bespoke document for institutional investors to comply with international legal requirements this will not be regarded as an Offer Document where there are restrictions in that jurisdiction preventing the inclusion of these disclosures.

Boards are best left to determine with the disclosure obligation providing important transparency for investors and stakeholders to scrutinise this decision making, where necessary.

NZX expects that in some situations the adviser may have other involvement in the transaction, such as acting as joint lead manager or underwriter to the transaction. NZX has no concern with an Issuer and its Board concluding that it is appropriate for an adviser to provide this advice in those circumstances, provided that the advice can be given in a manner that considers the best interests of all holders of Equity Securities generally. The disclosure obligation to name the party or parties who have provided external investment banking or corporate finance advice will provide transparency on who has been involved and provide additional information to investors to support their ability to make an informed decision, and scrutinise the decision making of the Issuer, where necessary. If an adviser has other involvement in the transaction, an Issuer should be mindful to ensure that the advice can be provided in an impartial manner.

As discussed below, there are also additional disclosure requirements for Issuers in relation to ANREOs under Rule 4.4.2 and it is strongly recommended that Boards obtain external advice to provide comfort on making those disclosures.

4. NZX's requirements

4.1 Issuance thresholds and requirements for approval

The general issuance thresholds under the Rules are as follows[2]:

- Issuers can generally undertake capital raising transactions on any terms with approval of the holders of Equity Securities.
- Issuers can undertake pro rata Renounceable offers, unlimited as to size and price, without approval of the holders of Equity Securities.
- Issuers can undertake pro rata accelerated non-Renounceable offers, subject to a maximum offer ratio of 1 new Equity Security for every 3 existing Equity Securities and meeting certain disclosure requirements as discussed below.
- Issuers can issue shares under a Share Purchase Plan (up to 10% of a Class of Equity Security, subject to a $50,000 offer limit per holder in any 12-month period).
- Issuers can issue up to 15% of their existing Equity Securities on a non-pro rata basis within a 12-month period (i.e., using placement capacity), by way of a placement, without approval of the holders of Equity Securities. A placement can be combined with one of the capital raising transactions listed above.
- The Code recommends on a "comply or explain" basis that Issuers should conduct capital raisings on a pro rata basis. Issuers must explain 'why' in their annual reports if they have elected not to do so. There are also additional disclosure obligations depending on the transaction as discussed below.

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

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

4.2 Disclosure requirements

The guidance set out in sections 4.2 and 4.3 of this Guidance Note reflect the minimum disclosures that are required at law and under the Rules, and Issuers may elect to make additional disclosures in relation to an offer to provide more comprehensive information to shareholders and other stakeholders.

NZ RegCo monitors announcements as part of its standard monitoring work. NZ RegCo has the ability under Rule 3.28.1 to require an amendment, addition or alteration to an announcement, to ensure that the issuer meets the requirements of the Rules.

In addition to this real-time/triage response, NZ RegCo could take follow on enforcement action for breaches of the Rules. Any enforcement outcome would necessarily depend on the nature of the breach.

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

4.2.1 Background

The requirements in relation to offers are prescribed by legislation, primarily the Financial Markets Conduct Act 2013 (**FMC Act**). Issuers should seek independent legal advice in relation to these requirements, including offering documents. The most common offer approach for Issuers is via the "QFP exclusion" (also known as the same class offer regime), as Issuers Quoted on NZX are Listed on a licensed product market. The QFP exemption is a prescribed exclusion under clause 19 of Schedule 1 of the FMC Act. It allows Issuers with securities Quoted on NZX's markets to make further offers of the same class of Financial Products as are Quoted (including entitlements arising from Rights issues), without meeting the full offer disclosure requirements in Part 3 of the FMC Act.

Issuers may only rely on the QFP exemption if they issue a QFP Notice (also known as a "Cleansing Notice") at the same time the Corporate Action notice is released, unless released earlier[3].

4.2.2 Offer documents

It is standard for Issuers making an offer of securities under the QFP exemption in which retail investors may participate to release a document setting out the terms and conditions of the offer (Offer Document). If an Issuer releases an Offer Document (including a full product disclosure statement), it must contain and be accompanied by the information prescribed by the Rules. The Offer Document for offers of equity, debt and fund securities made in reliance on the QFP exemption is not required to be provided to NZX for review prior to its release to market, and NZX does not need to provide confirmation that it does not object to the document. The offer materials can be released direct to the market with the QFP Notice described below. Issuers may wish to continue to provide a timetable for a proposed offer to NZX prior to the release of the Offer Document as an optional step, and NZX will review this with NZX's Product Operations team and provide any feedback (note that for an accelerated offer, information is required to be provided to NZX (not for public release) at least 5 Business Days prior to the Ex Date for the offer, as detailed below).

4.2.3 QFP Notice

Issuers relying on the QFP exemption are required to release a QFP Notice (cleansing notice) to the market within the 24 hour period before the offer is made or at an earlier time required by NZX (as explained further in the practice notes for certain types of capital raising). The QFP Notice requires the Issuer to confirm whether it is in compliance with its ongoing continuous disclosure obligations and financial reporting obligations. The Issuer providing the notice must also provide any Material Information that would otherwise be subject to an exception from disclosure under the Rules. In order to disclose any such Material Information, as well as to provide an overview of the Issuer and the capital raising, an Issuer would typically release an investor presentation to the market (rather than disclosing the Material Information in any Offer Document or in the QFP Notice itself).

The draft QFP Notice does not need to be provided to NZX prior to announcement to market, as described further below. For accelerated offers and offers that are conducted concurrently

[3] A Corporate Action Notice need only be released through MAP once all of the details required for inclusion in it are known, subject to the specific timing requirements under the Rules. Accordingly, a capital raising that has different elements could result in a further Corporate Action Notice being released after the initial Corporate Action Notice and the QFP Notice for all elements of the offer has been released through MAP.

(such as a placement and SPP) a single QFP Notice should be released, rather than individual notices for each component of the offer.

4.2.4 Offer announcements

Rule 4.17 outlines requirements relating to the timing (both notification to NZX, and announcement to the market), format, and content of offer announcements.

NZ RegCo has also published Practice Notes explaining the respective requirements as discussed below.

It is worth clarifying one general point in relation to capital raising offer timetables and specifically the application of Part B 2(d) of the Rules. NZX takes the view that the general clear Business Days interpretation rule does not apply to the capital raising timetables set out in the Practice Notes and that X can be regarded as a clear Business Day for this purpose. NZX understand this is the current market practice and NZX therefore takes this interpretation in the context of these capital raising notification requirements. As noted above, NZX is happy to receive a draft capital raising timetable for any Issuer contemplating a capital raising for review and to provide feedback from NZX's Product Operations team.

It is also worth clarifying that the Rules require draft Corporate Action Notices to be provided to NZX at least 5 Business Days before the Ex Date (and in the case of a Placement at least 5 Business Days before the offer is made), to the extent such information is available. This is to assist NZX in ensuring that it is operationally ready for the offer that is to be made, and the draft Corporate Action Notice provided to NZX ahead of release through MAP, does not need to contain all final information (such as pricing information) in relation to the offer.

NZX encourages Issuers to disclose what the pricing of any offer represents as a discount to the last closing price and, for Rights issues, as a discount to the theoretical ex-Rights price (**TERP**). Issuers may choose to disclose other offer pricing measures, such as the discount to a volume weighted average price.

4.2.4.1 Accelerated offers

In order to comply with the timing obligations set out in the Rules (including Rules 4.4.4 and 4.17) for accelerated offers carried out under the same class offer regime, a QFP Notice must be released no later than the Ex Date, which for an entitlement offer, means the first Business Day before the Record Date for that benefit (Ex Date). The Financial Markets Conduct Regulations 2014 (**FMC Regulations**) require Issuers to release this within the 24 hour period before the offer is made (or at an earlier time required by NZX). Accordingly, the QFP Notice for the same class offer should be released on the date that the institutional offer opens.

A draft of the Corporate Action Notice, if available, must also be provided to NZX (not for market release) at least 5 Business Days prior to the Ex-Date. NZX does not need to be provided with the QFP Notice, investor presentation or other accompanying materials that will be released to the market with the QFP Notice. Contact details are outlined in the Practice Notes referred to below and contact details are also included in section 6 of this guidance note.

Further information in relation to these requirements is contained in a Practice Note relating to Accelerated Offers, available here.

4.2.4.2 Rights issue requirements and timetables (traditional or vanilla Rights issues)

Under Rule 4.17, the draft Corporate Action Notice must be provided to NZX (not for market release) at least 5 working days prior to the Ex Date for the offer, to the extent such information is available. The Issuer must also release the Corporate Action Notice to market at least 4 Business Days before the Ex Date of the offer. Issuers will usually release other offer materials to market at this time, and provide a timetable outlining when further information is to follow.

Rights issues made under the QFP Exemption do not require approval by NZX, and NZX does not need to review any form of Offer Document for an offer made under the QFP Exemption.

Further information in relation to these requirements is contained in a Practice Note relating to Rights issue requirements and timetable, available here.

4.2.4.3 Placements

The announcement, notification and timing requirements are outlined in Rule 4.17.9.

For a placement, a draft of the Corporate Action Notice, if available, must be provided to NZX at least 5 Business Days before the offer is proposed to be made. A Corporate Action Notice in the prescribed form must be released to market promptly and without delay after the decision to make the offer has been made.

Even where a placement is limited to wholesale investors, Issuers should seek external advice as to whether it is necessary or desirable to provide a QFP Notice given the legal restrictions on on-sale of Financial Products that may otherwise apply.

4.2.4.4 Share purchase plans (SPPs)

Under Rule 4.17.8 Issuers must provide to NZX at least 5 Business Days before the Ex Date a draft of the Corporate Action Notice, if available.

NZX acknowledges that different timing requirements apply to the time at which a draft Corporate Action Notice should be provided in respect of a SPP (5 Business Days before the Ex Date) and the time at which the draft notice should be provided in respect of a Placement (5 Business Days before the offer is made). In the context of a SPP that is being conducted in conjunction with a Placement, NZX acknowledges that the draft Corporate Action notice for the SPP may not be available until the draft Corporate Action notice for the Placement is available. NZX has released a Practice Note that contains the timetable requirements for the offer of an SPP, and the offer of an SPP that is undertaken together with a Placement.

A Corporate Action Notice in the prescribed form must be released to market promptly and without delay after the decision to make the offer has been made and no later than one Business Day after the Record Date for the offer.

Under Rule 4.17.8(a) the Record Date for the SPP must precede the Issuer’s announcement under Rule 4.17.8 noted above.

4.2.4.5 Scaling and Shortfall allocation policies

The Rules outline requirements in relation to scaling and Shortfall allocation policies which are discussed under each specific offer type below.

4.3 Additional disclosure requirements relating to specific offer types

NZX has noted above the general principle reflected in the Rules that, as owners of the Issuer, existing holders of Equity Securities should generally be offered the first opportunity to participate in capital raisings on a pro-rata basis (i.e., to participate in proportion to their existing holdings), unless they have approved otherwise, or the issue is otherwise permitted under the Rules.

This is also reflected in recommendation 8.4 of the Code which recommends on a “comply or explain” basis that companies should conduct capital raisings on a pro rata basis. Issuers must explain ‘why’ in their annual reports if they have elected not to do so and there are additional disclosure requirements for specific transaction types as discussed below. We note that guidance is provided below as to the nature of disclosures that could be made when an issuer is explaining in a corporate action notice the reasons why a pro-rata structure has been adopted, which is also relevant to the ‘explain’ disclosures provided in an annual report.

As discussed in sections 2 and 3 of this guidance note above, offer structures will impact investors in different ways. There are specific disclosure requirements for different offer types to acknowledge these differences and so that information can be disclosed to explain why a particular structure has been chosen and to provide information in relation to the potential or expected impact on existing holders of Equity Securities.

4.3.1 Placements

In addition to the general disclosure requirements noted above, there are some additional disclosure obligations for Equity Securities issued under Rule 4.5.1 (which are usually placements). These additional requirements recognise the concern from investors that non-pro rata offers may dilute existing holders of Equity Securities who do not, or who are not offered the opportunity to, participate in an offer.

Therefore, if selecting a placement structure, Issuers must also make the following disclosures:

Corporate Action Notices

- Whether existing holders of Equity Securities will be eligible to participate and the basis on which eligibility for participation is determined (for example: existing holders must be domiciled in permitted jurisdictions).
- The reason for undertaking a placement rather than a pro-rata Rights issue or an offer under a Share Purchase Plan in which the Issuer’s existing Equity Security holders would have been eligible to participate.

Note: This may outline the benefits of the chosen offer structure as compared to a pro rata offer. This will depend on the circumstances, and these may be matters on which an Issuer obtains independent external advice. Therefore, NZX does not propose to provide an exhaustive list of the factors which must be considered or disclosed. Issuers should not use the reasons described in this section of the Guidance Note as a checklist but should consider why they have selected the non-renounceable structure in relation to their own specific circumstances, and make appropriate disclosures. Reasoning could include the ability to price the offer at a lower discount, the inability to obtain suitable underwriting support for a pro-rata structure, the relative timing to complete the offer or delivering other objectives such as introducing new investors to the register. It is likely there will be a number of factors relevant to the decision and that is why Issuers should carefully consider this disclosure and seek to provide meaningful information to investors so they can understand the rationale.

Within offer documentation and following the offer[4]

- Whether or not existing holders are entitled to participate and the basis on which that eligibility for participation is determined.
- 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 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).

Note: This is an area where Issuers are likely to want to seek external advice. Investment banks and corporate finance advisers have established practices for assessing existing security registers and considering how to involve existing holders of Equity Securities. The disclosure obligation seeks to ensure that Issuers are turning their minds to existing holders of Equity Securities and explaining the approach taken to their involvement (or not) in the offer. Issuers may choose to disclose the objectives of the allocation process, details of the allocation framework and which external advisers or groups had input into allocation decisions.

4.3.2 Pro rata offers

These requirements relating to the disclosure of Shortfall allocation policies apply whether the offer is Renounceable or non-Renounceable.

Under Rule 4.3.1, where the offer of Equity Securities includes one or more bookbuild(s) for the Shortfall, oversubscriptions for any Shortfall must be permitted by holders who are not excluded under Rule 4.4.1(e) and have applied for their full entitlement in the offer or the component of the offer to which the bookbuild relates. However, Issuers may set some parameters around the application for oversubscriptions and the allocation of any Shortfall in response to those applications on the basis that those oversubscriptions may not be successful in full or in part (for example: to include a cap on the oversubscriptions that may be applied for, or to provide further mechanics around how pricing will be set in a scenario where sufficient oversubscriptions are received from existing holders of Equity Securities to cover the entire Shortfall, but those oversubscriptions are not at a specified price).

Under Rule 4.3.1, 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. Issuers are encouraged to consider the guidance above in relation to allocations under placements when drafting this disclosure regarding the allocation policy.

4.3.3 Non-Renounceable pro rata offers (such as ANREOs)

These requirements apply in addition to the requirements for all pro rata offers. If an accelerated offer is non-Renounceable the ratio of Equity Securities offered must not be greater than 1 new Equity Security for each 3 existing Equity Securities held.

An Issuer should apply standard rounding (i.e. fractional entitlements of 0.5 and above

[4] Rule 4.17.9

rounded up, below 0.5 rounded down) which the Corporate Action Notice now contemplates will apply unless an Issuer informs NZX otherwise. This is permitted by Rule 4.4.1(c) which permits an Issuer to authorise a disproportionate offer to the extent necessary to round entitlements to a whole number, because Rule 4.4.1 modifies both Rules 4.3.1 and 4.4.2.[5]

If selecting an ANREO offer structure, an Issuer must make certain prescribed disclosures. These disclosures do not need to be approved by NZ RegCo, but an Issuer may elect to engage with NZ RegCo at its discretion if the Issuer wishes to clarify the application of the requirements.

Rule 4.4.2(c) requires Issuers to disclose within offer documentation:

a) the reasons why a non-Renounceable structure had been selected,
b) why the non-Renounceable structure is considered to be in the best interests of the Issuer,
c) the expected impact of the non-Renounceable structure on non-participating holders of Equity Securities, and
d) whether the Issuer has obtained expert investment banking or corporate finance advice in relation to the merits of the non-Renounceable structure and, if so, the name of the adviser(s),

(together, the **ANREO Disclosures**).

These ANREO Disclosures must be made by Issuers within offer documentation at the commencement of an offer. It is important that the Board demonstrates that it has turned its mind to the concerns of investors, including non-participating holders of Equity Securities. These disclosure obligations act as an important gating mechanism on the use of non-Renounceable structures because a Board must be satisfied that the structure is in the best interests of the Issuer and the reasoning for making this assessment must be disclosed. The ANREO Disclosures are discussed further below. Issuers are strongly encouraged to seek expert advice in relation to its selection of structure and this advice may support the ANREO Disclosures.

(a) Why a non-Renounceable structure has been selected

This should disclose the specific reasons why a non-Renounceable structure has been selected including details of the benefits of the chosen offer structure as compared to a renounceable pro-rata offer. Issuers should provide clear disclosure of their reasons for adopting a non-renounceable structure. This will depend on the issuer's individual circumstances, and these may be matters on which an Issuer obtains independent external advice, which is strongly encouraged. Therefore, NZX does not propose to provide an exhaustive list of the factors which must be considered or disclosed. Issuers should not use the reasons described in this section of the Guidance Note as a checklist but should consider why they have selected the non-renounceable structure in relation to their own specific circumstances and make appropriate disclosures to ensure investors and shareholders can understand the decision. Reasoning could include the ability to price the offer at a smaller discount, the inability to obtain suitable underwriting support for a pro-rata offer, the relative timing to complete the offer or availability of underwriting or sub-underwriting. It is likely there will be a number of factors relevant to the decision

[5] Given Rule 4.4.1(c) if, solely as a result of rounding, the ratio of Equity Securities would breach the 1:3 cap for one or more securityholders (for example, in a 1:3 offer, a shareholder with 2 shares would have an effective 1:2 ratio as a result of rounding), NZX does not consider this would breach Rule 4.4.2(c)(i), so long as the overall offer ratio is not in excess of 1:3.

and that is why Issuers should carefully consider this disclosure and seek to provide meaningful information to investors so they can understand the rationale.

(b) *Why the non-Renounceable structure is in the best interests of the Issuer*

An issuer must state the specific reasons why the non-Renounceable structure is in the Issuer's best interests including the material factors that the Board considered in undertaking its assessment. The Board's assessment will depend on the circumstances, and it is likely that the Board will have considered a number of factors.

An issuer should ensure that the disclosures are sufficient to provide meaningful information to enable investors and shareholders to understand the rationale behind the decision.

If the reason is because of availability of underwriting or sub-underwriting this should be explained, along with other material factors, (for example: the potential to issue at a smaller discount level or discussion on the expected impact on the after-market for the Issuer's Equity Securities). Issuers should include disclosure of all material factors relating to their assessment of why the non-Renounceable structure is in the best interests of the Issuer.

(c) *The expected impact of the non-Renounceable structure on non-participating holders of Equity Securities*

This disclosure is one of the most important disclosures for investors and existing shareholders, to enable them to understand the effects on non-participating shareholders of the ANREO structure.

The disclosure should address the groups of holders of Equity Securities which were disadvantaged by the choice of structure (for example: restrictions on participation) and if any measures have been taken to mitigate those disadvantages, a summary of those measures. This disclosure should also discuss the proposed discount to TERP and the proportionate dilutive impact the offer will have on a non-participating holder of Equity Securities.

(d) *Expert advice*

NZX recommends that Issuers obtain independent expert advice in relation to capital raising decisions. As noted above, this is not a formal requirement under the Rules, but it is strongly recommended. NZX considers that most Boards will have received independent external advice to support the ANREO Disclosures discussed above. Aspects of this advice may form part of the explanation of the reasoning from the Issuer on why the ANREO is in the best interests of the Issuer.

Under Rule 4.4.2(c)(ii)(C), Issuers must disclose within any Offer Document relating to the ANREO or, if there is no Offer Document, the information provided under Rule 4.17.7(b) whether expert corporate finance or investment banking advice has been obtained on the merits of the non-renounceable structure and to disclose the parties who provided the advice.

NZX has referred to a recommendation that Issuers seek "independent" advice in the context of this guidance note. The benefits of ensuring advice is independent should be obvious, to ensure that the advice is impartial and considers the best interests of the

Issuer and all holders of Equity Securities generally. However, NZX does not propose to assess or approve the parties providing this advice and therefore it does not propose to assess what is considered “independent” for this purpose, beyond noting obvious factors. NZX expects that in some situations the adviser may have other involvement in the transaction, such as acting as joint lead manager or underwriter to the transaction. NZX has no concern with an Issuer and its Board concluding that it is appropriate for an adviser to provide this advice in those circumstances provided that the advice can be given in a manner that considers the best interests of all holders of Equity Securities, generally. Issuers should consider the financial interests that an underwriter has under different offer structures, when determining whether it is appropriate for an underwriter to provide advice. The disclosure obligation to name the party or parties who have provided external investment banking or corporate finance advice will provide transparency on who has provided the advice, and provide additional information to investors to support their ability to make an informed decision, and scrutinise the decision making of the Issuer, where necessary. If an adviser has other involvement in the transaction, they should be mindful to ensure that their advice can be provided in an impartial manner.

While an Issuer is not required by the Rules to disclose the advice received to inform the ANREO Disclosures, NZX considers an Issuer should disclose a high-level summary of the advice that the Issuer has obtained to the extent that the advice diverges from the explanation given by the Issuer as to why a non-Renounceable structure has been selected and is in the best interests of the Issuer. NZX has no concern with an Issuer including language within its explanation to the effect that, to the maximum extent permitted by law, the external adviser(s) do not accept any liability in relation to the contents of the offer documentation.

4.3.4 Share purchase plans

Under Rule 4.3.1, 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. Issuers are encouraged to consider the guidance above in relation to allocations under placements when drafting this disclosure regarding the allocation policy.

Under the definition of a Share Purchase Plan in the Rules, an Offer Document must outline the matters contained in limbs (a) to (d) of the definition, which form part of the terms of the offer and relate to the maximum amounts that may be offered under the SPP and the scaling policy for oversubscriptions.

4.3.5 Corporate Action Notices

As discussed above, Issuers are required to release Corporate Action Notices in relation to capital raising transactions. This is a prescribed form available [here]. Issuers must provide these Corporate Action Notices in draft to NZX prior to announcing the offer, to ensure NZX is able to process the relevant corporate action. The Corporate Action Notice provided to NZX (not for market release) should contain all information available at that time, with any preliminary information clearly highlighted as such (for example pricing ratios or size of the capital raise), these notices do not need to contain all final details of the offer when they are provided for review. Issuers will also be required to release a Capital Change Notice following the allotment of any Equity Securities made under an offer in accordance with Rule 3.13.1.

Contact details for NZX are included in section 6 of this guidance note.

5. Waivers

The purpose of the capital raising limitations under the Rules is to ensure that there are appropriate protections for holders of Equity Securities as the owners of the company.

The policy underpinning the requirements is that holders of Equity Securities are the owners of the Issuer and, generally speaking, the rights to subscribe for new capital in a capital raising should belong to them, either to be exercised or sold. There are some exceptions to this general rule, as reflected in the issuance thresholds discussed under section 4 of this guidance note, and the range of considerations in relation to selecting the appropriate capital raising structure. The exceptions under the Rules reflect that non pro-rata structures or non-Renounceable structures may be appropriate in some circumstances, and the conditions contained in the Rules for relying on those exceptions provide appropriate investor protections in those circumstances.

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

On that basis, NZ RegCo is very unlikely to grant waiver relief to extend the scope of the permitted issuance thresholds or to waive shareholder approval requirements in relation to capital raisings. Neither NZX nor NZ RegCo considers it appropriate for there to be a market expectation that NZ RegCo will by default routinely facilitate capital raisings structures that are not permitted under the Rules.

NZ RegCo anticipates that it would only be likely to support a deviation from the proposed issuance ratio controls contained in the Rules in extreme circumstances, and if NZ RegCo was satisfied that another issuance structure (or combination of other available issuance structures) was not viable. NZX considers that there will be practical difficulties for NZ RegCo in making such a determination. In order to do so, NZ RegCo would need to make very difficult commercial judgments including a merits assessment of the offer structure, which NZ RegCo is not well placed to do through a waiver application process, and which should ultimately be a decision for an Issuer's board.

5.1 Requirements when applying for a waiver

NZ RegCo acknowledges that while waivers from the capital raising Rules will be rare, there may be circumstances where an Issuer considers a waiver from the Rules to be appropriate.

When making an application for a waiver from Rule 4, Issuers should consider the policy of Rule 4 (as set out above) and explain why any capital raising structure does not offend the policy of the Rule, and why waiver relief is necessary. NZX notes that unlike other waivers, there is very limited basis to say that a capital raising structure still meets the policy that underpins the Rule if it does not comply with the bright-line Rule requirements, nor is it considered appropriate for NZ RegCo to make that decision based on its own view that that outcome is fair and reasonable to existing holders. Along with consideration of the policy of the

Rules (which includes shareholder protection), NZX will expect to receive submissions establishing (as applicable):

- Background on the underlying circumstances of the Issuer, and proposed capital raising structure, and why those circumstances are considered sufficiently “extreme” to justify a waiver which removes the holders’ of Equity Securities right to vote on the issuance. Please note that such background would necessarily form part of a published waiver decision if granted.
- Why alternative structures are not viable.
- How the Issuer proposes to consider the interests of existing shareholders and the measures which will be put in place to limit or mitigate any dilution to existing shareholders.
- The reasons for the urgency of the capital raising transaction and why the Issuer has not been able to plan for the capital raise in a manner which would have afforded more options to the Issuer.
- All other information necessary to support the certifications (see the discussion of conditions in section 5.2 of this guidance note, below) from the non-interested directors of the Issuer that:
    - entry into the transaction is in the best interests of: (1) the Issuer and (2) its shareholders as a whole who were on its register at the time the offer is made.
    - the proposed waiver would be in the best interests of: (1) the Issuer and (2) its shareholders as a whole who were on its register at the time the offer is made.

The second limb in relation to the waiver relief being in the best interests, will require a consideration of the objective reasoning of why a fundamental shareholder protection should be overridden and, in particular, why shareholders should not have an opportunity to approve a particular transaction structure (where applicable).

The Issuer should also clearly explain what information will be released to market about the proposed transaction. An applicant can also usefully provide a draft announcement for background information.

5.2 Likely conditions to any waiver

When granting a waiver from Rule 4, NZX will likely make it conditional upon certain matters.

These conditions reflect the fact that shareholders will not have the ability to vote on the proposed transaction. As well as any conditions that are appropriate due to the specific facts, other likely conditions are as follows:

- the directors of the Issuer provide a certificate to NZ RegCo certifying that (as appropriate):
    - entry into the transaction is in the best interests of: (1) the Issuer and (2) its shareholders as a whole who were on its register at the time the offer is made.
    - the proposed waiver would be in the best interests of: (1) the Issuer and (2) its shareholders as a whole who were on its register at the time the offer is made.
- the directors of the Issuer include the grounds for the certifications described above, in the certificate.

- the certificate is released to the market at the time the waiver is announced to the market.
- the waiver, its conditions and implications are disclosed in the Issuer’s next annual report.

As noted in the list above, and reflecting the importance of shareholders understanding why an Issuer has sought a waiver from Rule 4, NZX requires that this certification be published to market at the time NZ RegCo releases its waiver decision.

The certification must include a summary of the core grounds on which the Issuer determined that the transaction, and granting of the waiver, are in the best interests of the Issuer and its shareholders.

Issuers should submit draft certification to NZX when applying for a waiver.

5.3 Disclosure of waiver decisions

As contemplated by Rules 9.7.2 and 9.7.4, NZX will usually publish waiver decisions through the Market Announcement Platform over the Issuer’s ticker and the NZ RegCo ticker. Ordinarily, this will occur on announcement of the relevant transaction. The waiver decision will set out facts of the application and grounds for the decision unless the affected Issuer establishes satisfactory grounds for maintaining confidentiality, or NZX elects at its sole discretion not to publish the decision.

6. Contact us

If you have any questions on the matters in this guidance note, please contact NZ RegCo at Issuer@nzregco.com or (04) 495 2825. However, it is the Issuer's obligation to comply with the Rules and the FMC Act, and any assistance from NZ RegCo should not be taken to constitute legal advice on the Issuer's obligations.

This guidance note notes that the Rules outline requirements for Issuers to provide information to NZX (not for public release) in relation to offers. The respective Practice Notes referred to above explain these requirements in more detail.