



NZX Regulation Decision

NZX Regulation (NZXR)

Class Waiver and Ruling in relation to Rule 4.1 and 4.4

26 March 2020



Class Waiver and Ruling in relation to Rules 4.1 and 4.4

Background

1. This waiver and ruling applies to the NZX Listing Rules dated 1 January 2020 (the **Rules**).
2. Capitalised terms that are not defined in this decision have the meanings given to them in the Rules.
3. Rule 4.4 of the Rules sets out certain requirements for pro-rata issues and Share Purchase Plans, including Accelerated Offers. The purpose of this waiver and ruling is to permit Issuers to utilise a structure commonly referred to as an “ANREO” or Accelerated Non-Renounceable Entitlement Offer, which was not contemplated as being within the scope of Rule 4.4, as well as to clarify other aspects of Accelerated Offers.
4. The Rules to which this decision relates are set out in Appendix One.

Waiver from Rule 4.1.1

5. NZX Regulation (**NZXR**) grants a waiver from Rule 4.1.1 to the extent that Rule requires an Issuer to obtain approval by Ordinary Resolution to issue Equity Securities under an offer complying with the conditions set out in paragraph 6 below (an **ANREO**).
6. The waiver set out in paragraph 5 above is provided on the condition that the ANREO is conducted as an Accelerated Offer in compliance with Rules 4.4.1 and 4.4.2, with the following modifications:
 - a. The ratio of Equity Securities offered must not be greater than two Equity Securities for each one Equity Security held.
 - b. The Rights must be non-Renounceable and therefore:
 - i. Rule 4.4.1(e) will not apply to the ANREO to the extent that Rule requires the sale of any Ineligible Shareholders’ Rights or the underlying Equity Securities to which any Ineligible Shareholders would be entitled if they were eligible to participate in the ANREO; and
 - ii. Rule 4.4.2(b) will not apply to the ANREO.
 - c. In relation to Ineligible Shareholders, the Issuer may do any one or more of the following:
 - i. offer underlying Equity Securities to which any Ineligible Shareholders would be entitled if they were eligible to participate, under one or more bookbuild(s) undertaken in relation to the ANREO (in which case Rule 4.4.2(a) will apply), but any net premium achieved in excess of the price need not be returned to Ineligible Shareholders;
 - ii. issue underlying Equity Securities to which any Ineligible Shareholders would be entitled if they were eligible to participate within three months of close of the ANREO, provided the price, terms and conditions are not materially more favourable to the person to whom they are issued than the original offer; or

- iii. not offer Rights to those Ineligible Shareholders and not issue the underlying Equity Securities.
7. The waiver set out in paragraph 5 above will apply until the earlier of:
- a. 31 October 2020; and
 - b. the date that NZXR specifies (by giving not less than 10 Business Days' notice to the market) the waiver set out in paragraph 5 above shall cease to apply.

Ruling on Rule 4.4

8. NZXR rules, for the purposes of Rules 4.4.2 and 4.4.3, that:
- a. Where an Issuer is making an Accelerated Offer which includes an Institutional Entitlement Offer and a Retail Entitlement Offer, the price per Equity Security under the Institutional Entitlement Offer must not be less than the price per Equity Security under the Retail Entitlement Offer; and
 - b. The definition of Retail Entitlement Offer contained in Rule 4.4.3 will read as follows:

means a pro-rata offer of Equity Securities, made at the same ratio as 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.
9. The ruling set out in paragraph 8 above will apply until the earlier of:
- a. 31 October 2020; and
 - b. the date that NZXR specifies (by giving not less than 10 Business Days' notice to the market) the waiver set out in paragraph 8 above shall cease to apply.

Reasons

10. In coming to the decision to provide the rulings and waivers set out above, NZXR has considered that:
- a. a significant number of Issuers and other capital markets participants are being adversely affected by the 2019/2020 coronavirus pandemic (**COVID-19**). The potential adverse impacts include capacity constraints in Issuers' working capital positions;
 - b. NZXR seeks to ensure that Issuers are able to access sufficient equity capital urgently should the need arise, in addition to any existing debt facilities;
 - c. NZXR considers this class waiver is appropriate, as:
 - i. the waiver will mitigate some of the impacts of the COVID-19 pandemic in relation to Issuers' ability to access sufficient equity capital by more readily facilitating urgent equity capital raisings under an ANREO structure, which is considered reasonable given the current situation in respect of COVID-19;

- ii. other than allowing for the use of an ANREO structure, Issuers will be required to fully comply with the Rules and the FMC Act in all other respects, including compliance with their ongoing continuous disclosure obligations and financial reporting obligations;
- d. ANREOs have been a feature of the ASX Listing Rules for a significant period of time, so many investors will be familiar with the features of these offers;
- e. ANREOs support participation in any equity capital raising by retail shareholders, and seek to mitigate dilutionary effects, compared to a placement (which may be a possible alternative if an Issuer is unable to undertake an ANREO). The potential for dilution under ANREOs are further mitigated through a capped maximum offer ratio, which must not be greater than two Equity Securities for each one Equity Security held;
- f. The policy intention of the definition of Retail Entitlement Offer (in Rule 4.4.3) is to protect retail shareholders from paying a higher price in an Accelerated Offer than that which Eligible Institutional Shareholders pay. An Accelerated Offer that provides retail shareholders (who do not have the benefit of the accelerated participation that Eligible Institutional Shareholders receive) with downside pricing protection does not offend this policy intention; and
- g. Issuers are still subject to recommendation 8.4 of the NZX Corporate Governance Code, under which Issuers should seek to offer further Equity Securities to existing Equity Security holders on a pro rata basis, by favouring capital raising methods that provide existing Equity Security holders with an opportunity to avoid dilution by participating in the offer.

Appendix One

NZX Listing Rules

4.1 Issue of New Equity Securities

4.1.1 Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

4.1.2 An Issuer may issue Equity Securities, without approval by Ordinary Resolution, by way of:

- (a) a pro-rata Rights offer, bonus issue or a Share Purchase Plan in accordance with Rule 4.3 and, if applicable, Rule 4.4,
- (b) an issue under an Issuer's 15% placement capacity in accordance with Rule 4.5.1,
- (c) an issue to Employees, in accordance with Rule 4.6, or
- (d) other issues for dividend reinvestment plans, director remuneration, takeovers, amalgamation, conversions and Minimum Holdings in accordance with Rules 4.7 to 4.9.

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) 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 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 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) instead of arranging the sale of Renounceable 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) 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,
- (d) 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),
- (e) if Rule 4.17.6 would otherwise apply to the Accelerated Offer, an Issuer may elect to:
 - (i) rather than comply with Rule 4.17.6(a):
 - (A) provide the information required by Rule 4.17.6(a) to NZX Regulation (not for public release) at least 5 Business Days before the Ex Date for the Accelerated Offer (to the extent such information is available), and
 - (B) release through MAP the information required by Rule 4.17.6(a) no later than the Ex Date for the Accelerated Offer, or
 - (ii) rather than comply with Rule 4.17.6(d), the quotation of Rights of Renounceable Rights may cease at the close of trading on the day 4 Business Days before the closing date of the Retail Entitlement Offer.

- (f) if Rule 4.17.7 would otherwise apply to the Accelerated Offer, an Issuer may elect to:
 - (i) provide to NZX the information required by Rule 4.17.7 at least 5 Business Days before the Ex Date for the Accelerated Offer (to the extent such information is available), and
 - (ii) release through MAP the information required by Rule 4.17.7 no later than the Ex Date for the Accelerated Offer,
- (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:

Eligible Institutional Shareholders	means the institutional Equity Security holders of the Issuer, being wholesale investors (as defined in Schedule 1 of the FMC Act) or the equivalent type investor under securities legislation applying in a jurisdiction outside New Zealand, who are eligible to participate in the Institutional Entitlement Offer.
Ineligible Shareholders	means those Equity Security holders of the Issuer who do not receive an offer to participate in the Institutional Entitlement Offer or Retail Entitlement Offer by reason of Rule 4.1.1(e).
Institutional Entitlement Offer	means an accelerated pro-rata entitlement offer of Equity Securities made at a fixed price 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 price and 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.