NZ | CORPORATE GOVERNANCE | FORUM

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Kristin Brandon
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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

#	Question	Response
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 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.
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?	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.

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.