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.