



Institute of Finance Professionals New Zealand Inc.

5 September 2022

Kristin Brandon,

Head of Policy and Regulatory Affairs,

NZX Ltd

By Email: policy@nzx.com

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

Dear Kristin.

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

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

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

¹ And thus consistent with the Continuous Disclosure obligations.

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

Recommendations

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

1. That companies be required to have, and **disclose** their Capital Raising Policy settings.
2. That a company's directors should be obligated to **disclose** the rationale behind any divergence from undertaking a *pro-rata*, non- renounceable offer ***at the time of the offer***.
3. A key decision taken by directors is the **proportion** of the capital raised that will be placed. We suggest that the retail offer must be large enough to ensure that for all retail shareholders who wish to participate their shareholding will not be *unnecessarily* diluted. The \$30,000 cap on individual retail shareholder's participation is thus arbitrary, unfair, and should thus be removed. [**Note** : We observe that there appears to be a tendency to maximize the placement size at the expense of the retail raise.]
4. The limit on placements to 15% of the market capitalization in any year is a blunt instrument. Any placement at a deep discount should require shareholder approval unless a company is in significant stress, requires urgent capital and that the Directors of a company disclose their rationale to deviate from their Capital Raising Policy (as proposed in 1).
5. While the NZX's Rules do not place restrictions on the price at which securities can be issued, we recommend that size restrictions ³ be removed on all forms of capital raises **where they are done at a 1.5% discount or lesser** to the market price (1-month VWAP).
6. That **NZX** provide explicit Guidance (**disclosure**) on:
 - a) The **probability** of achieving a waiver for a non pro rata, non-renounceable offers without a liquidity event.
 - b) The **parameters** where a Waiver is likely to be obtained for non-renounceable offers and other capital raising structures where existing shareholders are disadvantaged

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

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

- c) The timeliness of any disclosures.
 - d) What standard safe harbors' around non-renounceable offers may look like.
 - e) The choice in the trade-off in wealth transfer between obtaining a fully Underwritten Offer and the dilution from a deeply discounted offer.
7. The participation of custodian account holders in placements enables the managers of the custodian accounts to potentially game the system for custodian accounts to participate twice in an offer. Custodians should be required to disclose the identities of their custodian accounts at the record date, so those participating in the placement do not get to double dip.
 8. That harmonization of the listing rules with the ASX while *desirable*, should **not** be considered to be an absolute imperative. We are less concerned about the risk of regulatory arbitrage with the ASX.
 9. Capital raising structures (like ANREOs) that cause wealth transfer should **only** be allowed by NZX waiver in limited circumstances (say 5% or 2 standard deviations of waiver requests). We see these exemptions being around unexpected, time sensitive "extremis" events where working capital is required to protect a company's going concern status (analogous to the class exemption waiver for Covid).
 10. The "allowance by waiver" exception would negate the requirements for added investor "protections" around non-equitable capital raising structures.
 11. Given the underlying issue for directors' is the trade-off been time, certainty, and risk, that the NZX consult around how the procedural elements around capital raises may be meaningfully shortened.

We thus agree with the introduction of proposed requirements:

12. That dilutionary capital raising structures provide liquidity events.
13. That the allocation policy for scaling from **oversubscription** must provide that in the first instance the shortfall will be offered to all holders who participated in the pro rata issue and indicated that they wished to apply for more than their entitlement.
14. That the offer of the **shortfall** must be made to them on a pro-rata basis, having regards to both the size of their existing holdings on the record date for the pro rata issue and duration of ownership prior to the record date, and the number of the securities they have applied for in excess of their entitlement under the pro-rata issue.
15. For increased disclosure of underwriting (but **not sub-underwriting**) arrangements through corporate action notices.

Part B Responses

We see no immediate requirements for either:

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

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

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

Yours sincerely,

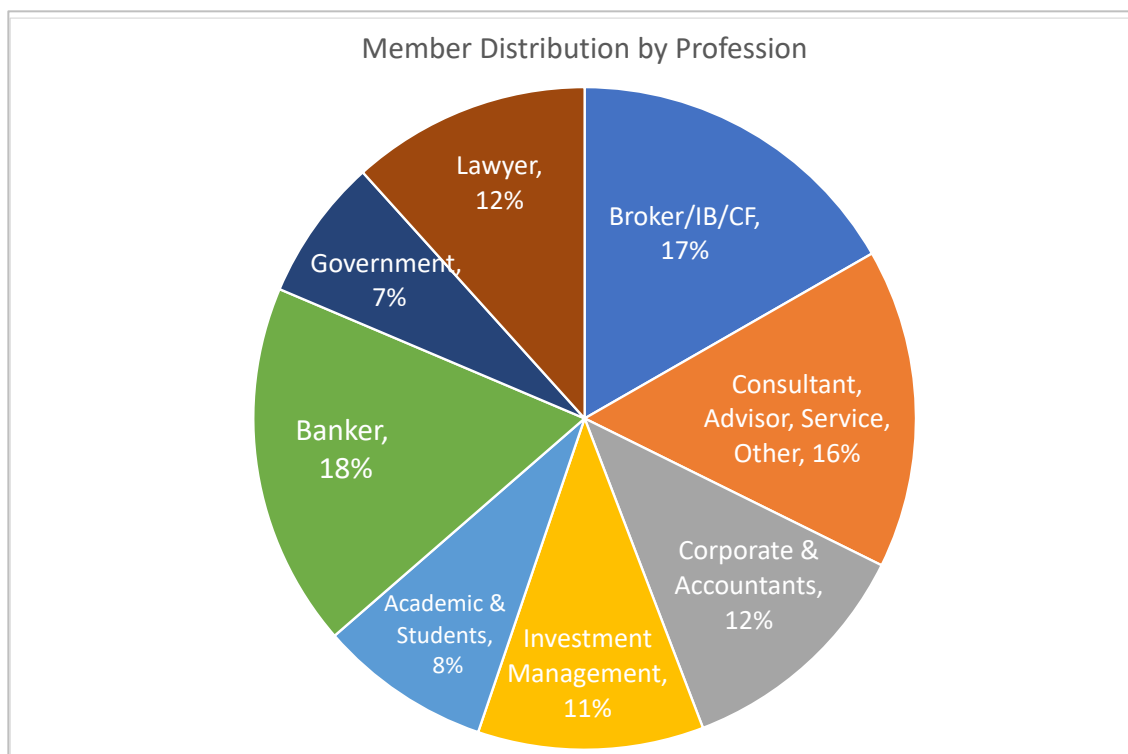
A handwritten signature in blue ink, appearing to read "Clyde S. D'Souza". The signature is fluid and cursive, with the first and last names being more prominent.

Clyde S. D'Souza

Director – INFINZ

About INFINZ

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



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

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

Feedback for Proposed Specific Amendments

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

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

2. Noting that:

- ASX permits the use of ANREOs provided dilution limits are in place;
- Structures have recently been employed which mimic ANREOs, but have not required dilution limits; and that

We are proposing enhanced disclosure requirements:

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

In principle no, not without other “mitigations”. The issue here is the size of the offer limit.

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

Yes

4. Should we remove the requirement to make an announcement five days prior to the ex-date for traditional rights offers (i.e. for secondary capital raisings) to more closely align with accelerated offers? If so, should this also be permitted for SPPs in addition to the existing option for issuers to announce an SPP following the record date?

No view

5. Should we introduce a requirement that the allocation policy for any shortfall from a pro rata offer must provide that in the first instance the shortfall will be offered to all holders who participated in the pro rata issue and indicated that they wished to apply for more than their entitlement?

Yes

The offer of the shortfall must be made to them on a pro rata basis, based either on the size of their existing holdings on the record date for the pro rata issue or the number of the securities they have applied for in excess of their entitlement under the pro rata issue.

Yes

6. Should we increase the limit for participation in SPPs from the current \$15,000 to \$50,000 to align with market practice, providing that scaling policies are pro rata?

Yes

7. Should we increase the proportion of shares which can be issued outside of placement capacity under a SPP from the current 5% to 10% of the number of equity securities of the relevant class, subject to the issuer meeting enhanced disclosure requirements as noted in the disclosure section below and meeting the scaling requirement noted above?

Refer Recommendation 3

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

Refer Recommendation 10

9. Should we only allow the scaling of over subscriptions for an SPP by reference to holdings on the record date of the offer without allowing scaling to be by reference to holdings at the closing date of the offer as currently permitted under the rules?

Yes. This ensures existing shareholders retain a preferred status.

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

Yes

11. Should we require increased disclosure of underwriting (and sub-underwriting) arrangements through corporate action notices. We seek feedback on requiring disclosure of the following (where applicable):

- Whether a joint lead manager (JLM) has been appointed
- If so, the name(s) of the JLM(s) as
- The fees payable to the JLM(s)
- Whether the issue will be underwritten
- If applicable, the name(s) of the underwriter
- The extent of the underwriting
- The fees to be paid to the underwriters
- Whether the issue will be sub-underwritten
- If applicable, the name(s) of the sub-underwriters
- The fees paid to the sub-underwriters
- The material circumstances in which the underwriting and sub-underwriting arrangements may be amended or terminated

12. NZX seeks feedback on whether to require disclosure of the following (some of which are addressed in the proposed amendments to the Corporate Action notice available above):

- a) **Pro rata issues** – require disclosure of the shortfall allocation policy, required as part of the proposal under question 6 above, within the offer document for a pro rata issue.
- b) **Scaling policies** for SPPs, Rights issues and Accelerated Offers.
- c) **Placements** - to disclose:
 - details of the offer in a Corporate Action Notice, including the purpose of the placement, reason for conducting a placement rather than a pro rata rights issue or an SPP, whether Related Parties are eligible to participate in the placement and details of any escrowed shares issued in the placement.
 - within the documentation relating to the offer (and the Corporate Action Notice) whether existing shareholders will be entitled to participate in the offer, and if so, on what basis.
 - within 5 business days of the issue of shares under the placement, details of the approach the Issuer took in identifying investors to participate in the placement and how it determined their allocations (including the key objectives and criteria that the entity adopted in the allocation process, whether one of those objectives was a best effort to allocate on a pro rata basis to existing holders and any significant exceptions or deviations from those objectives and criteria).
- d) Reasons for selecting an ANREO structure.

13. We welcome any feedback on our proposal to introduce a mechanism for NZ RegCo to be able to request an allocation schedule as per the current proposals being consulted on by ASX noted above. This would not be for publication.

[No additional comment.](#)

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

[Yes. We see that smaller companies in particular would benefit from enhanced guidance](#)