



NZX Regulation Issuer Update: COVID-19 class relief for Accelerated Non-Renounceable Entitlement Offers and retail pricing

This update sets out details of a class waiver and ruling granted today by NZX Regulation in relation to:

- issuers seeking to undertake an Accelerated Non-Renounceable Entitlement Offer under the NZX Listing Rules; and
- the pricing of retail entitlement offer components of accelerated offers.

Please contact NZX Regulation if you have any questions in relation to the matters outlined in this update.

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Accelerated offers - equity capital raising

Background

Under the NZX Listing Rules, Issuers are able to undertake pro-rata renounceable or accelerated offers of equity securities, without approval by shareholders.

Most recent accelerated offers in New Zealand have taken the form of an 'accelerated renounceable entitlement offer' (**AREO**). Under an AREO, entitlements not taken up by eligible shareholders, or which would have been issued to ineligible shareholders had they been entitled to participate, are offered for sale through one or more bookbuilds with any premium realised being paid to those relevant shareholders.

NZX Regulation has been engaging with market participants on arrangements that would enable issuers to undertake an additional form of accelerated offer – the Accelerated Non-Renounceable Entitlement Offer (**ANREO**).

The key features of an ANREO typically include the following:

- an institutional offer and retail offer
- an institutional bookbuild, with any proceeds paid to the issuer (not to the non-participating institutional shareholder), although an institutional bookbuild may not be undertaken
- no shortfall bookbuild for the retail offer

The ANREO structure is a feature of other mature markets, including under the ASX Listing Rules, and can be an effective offer structure to enable issuers to access equity capital funding in periods of market volatility.

Under the Listing Rules, the retail entitlement offer component of an accelerated offer requires that offer to be made at the same price and ratio of the related institutional entitlement offer. This means that participation in the retail entitlement offer, which occurs after the institutional offer and which remains open for a longer period, may be more vulnerable to the impacts of broader market volatility and adverse price movements that occur between announcement of the offer and the end of the retail entitlement offer. One mechanism to mitigate those risks to participation in the current environment, is to enable differential pricing for the retail entitlement offer, under which retail holders have access to a downside price protection mechanism.

Class relief for ANREO equity capital raising

NZX Regulation acknowledges the unprecedented impacts arising from the COVID-19 virus, and the challenges being experienced by Issuers and other capital markets participants. Those potential challenges also include capacity constraints on Issuers' working capital positions.

In recognition of these factors, NZX Regulation seeks to ensure that Issuers are able to access sufficient equity capital urgently should the need arise, in addition to any existing debt facilities. On 19 March 2020, NZX Regulation granted class relief to issuers from a number of Listing Rules that apply to equity capital raisings.

NZX Regulation considers it appropriate to enable issuers to also undertake ANREOs.

To facilitate this, NZX Regulation has granted a class waiver to enable ANREOs as accelerated offers under the Listing Rules, subject to conditions under which the ratio of equity securities offered must not be greater than two equity securities for each one equity security held (ie a 2 for 1 issue). That condition seeks to mitigate the potential for dilution of shareholders that elect not to participate, or who are ineligible to participate given the ANREO structure does not enable those shareholders to receive any value for their rights. The class relief will apply until 31 October 2020.

An example timetable for an ANREO offer is set out at the end of this issuer update.

NZX Regulation also notes that the protections for shareholders under the Companies Act and Part 2 of the Financial Markets Conduct Act 2013 will still have full effect during this time. NZX Regulation notes the heightened market volatility currently being experienced, as well as the increased risk to Issuers' operating and financial performance. Both Issuers and investors are encouraged to obtain independent advice if participating in equity capital raisings during this period, to ensure they are adequately informed before making any decisions.

Class ruling on downside price protection

NZX Regulation considers it appropriate to enable issuers to include downside price protection mechanisms for retail shareholders in any accelerated offers, given the current market volatility.

To facilitate this, NZX Regulation has granted a class ruling under which accelerated offers will be able to include differentiated pricing in any retail entitlement offer. Under the ruling, it will be permissible for issuers to set a different price to be paid by retail participants in a pro-rata accelerated offer to that paid by institutional participants, so long as that price is less than the price paid by institutional participants. For example, an issuer might elect to set the price for retail participants as the lesser of:

- the price paid by institutional shareholders under the institutional entitlement offer; and
- such other price as set by the issuer under the offer terms (for example, a price set by a VWAP calculation).

For clarity, this ruling applies to any accelerated offer with a retail entitlement offer, and not just ANREOs as earlier outlined in this update.

NZX Regulation will continue to closely monitor the evolving COVID-19 situation, and may extend the scope of the class waiver and ruling if that is appropriate.

Rationale for class relief

The class relief outlined above is consistent with the policy and principles underpinning Recommendation 8.4 of the NZX Corporate Governance Code, which encourages pro-rata offer structures.

In addition, the use of ANREO structures should mitigate market and execution risk during periods of market volatility given that (i) it should enable improved access by issuers to underwriter and sub-underwriter support, and (ii) ANREO offers can be conducted within a shorter timeframe than renounceable accelerated offers given no bookbuild need be undertaken.

The policy intention behind the pricing requirements for a retail entitlement offer is to protect retail shareholders from paying a higher price in an accelerated offer than that which institutional shareholders pay. An accelerated offer that provides retail shareholders with downside pricing protection is consistent with that policy intention.

Compliance with the QFP exemption

As was highlighted as part of the 19 March 2020 class relief communications, Issuers undertaking any offer of securities in reliance on the “quoted financial product” exemption under clause 19 of Schedule 1 of the Financial Markets Conduct Act 2013, are reminded that that exemption requires publication of a cleansing notice. Under the cleansing notice, the Issuer will need 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 Listing Rules.

Australian law considerations for Issuers

While the ANREO is a common offer structure utilised in Australia, differential pricing in accelerated offers may not be permitted for offers extended to retail shareholders in Australia by an NZX Issuer. Issuers are cautioned to obtain independent advice on the ability to make any such offer during this period, to ensure they are adequately informed before making any decisions.

Example ANREO timetable

Action(s) or Event	ANREO <i>Using timing relief under class waiver issued 19 March 2020 – available until 31 October 2020</i>	ANREO <i>Using standard 7BD retail offer period under Rule 4.17.2(b) with electronic acceptances</i>
<input type="checkbox"/> Provide to NZX Regulation (not for market release) the information required under Rule 4.17.7, including a draft of the template Corporate Action Notice (Rule 4.4.2(f)(i))	At least 4 Business Days before Day X	At least 4 Business Days before Day X
<input type="checkbox"/> Apply to NZX Regulation for trading halt for Institutional Offer and Institutional Bookbuild	Day X-1	Day X-1
Day X <input type="checkbox"/> QFP cleansing notice released <input type="checkbox"/> Trading halt begins pre market open <input type="checkbox"/> Release through MAP the information required by Rule 4.17.7 (or no later than Ex Date) including a completed Corporate Action Notice (Rule 4.4.2(f)(ii)) <input type="checkbox"/> Announce Accelerated Offer and release offer document on NZX <input type="checkbox"/> Institutional Offer opens	Day X	Day X
<input type="checkbox"/> Ex Date of Accelerated Offer <input type="checkbox"/> Institutional Offer closes	Day X+1	Day X+1

Action(s) or Event	ANREO <i>Using timing relief under class waiver issued 19 March 2020 – available until 31 October 2020</i>	ANREO <i>Using standard 7BD retail offer period under Rule 4.17.2(b) with electronic acceptances</i>
<input type="checkbox"/> Announce results of Institutional Offer <input type="checkbox"/> Institutional Bookbuild (if applicable) <input type="checkbox"/> Record Date	Day X+2	Day X+2
<input type="checkbox"/> Announce results of Institutional Bookbuild <input type="checkbox"/> Trading halt ends on open of trading <input type="checkbox"/> Retail Offer opens <input type="checkbox"/> Retail entitlement letters and forms sent out (Rule 4.17.1)	Day X+3	Day X+3
<input type="checkbox"/> Retail Offer closes (Rule 4.17.2)	Day X+6	Day X+10
<input type="checkbox"/> Announce results of Retail Offer	Day X+7	Day X+11
<input type="checkbox"/> Last day for settlement and allotment for Institutional Offer and release allotment notice for Institutional Offer no later than Day X+12 (Rule 4.19.1)	Day X+11	Day X+11
<input type="checkbox"/> Last day for settlement and allotment for Institutional Bookbuild and release allotment notice for Institutional Bookbuild no later than Day X+13 (Rule 4.19.1 and Rule 3.13.1)	Day X+12	Day X+12
<input type="checkbox"/> Last date for settlement and allotment of Retail Offer and release allotment notice for Retail Offer no later than Day X+17 (Rule 4.19.1 and Rule 3.13.1)	Day X+16	Day X+20