CHAPMAN TRIPP

January 2020

NEW ZEALAND EQUITY CAPITAL MARKETS

Trends and insights

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Innovation and change abounds

New Zealand's equity capital markets revival a work in progress

New Zealand's equity capital markets are showing signs of revival following significant changes in 2018 and 2019. These included the consolidation of NZX's boards, changes to fees and rules around on-market trading, the new NZX Listing Rules and the formation of – and recommendations from – the industry-led body, Capital Markets 2029.

Despite moderate projections for markers such as initial public offering (*IPO*) activity (from a very low base – zero in 2018), market performance remains strong and somewhat insulated from overseas volatility. 2020 is off to a very good start with New Zealand market performance continuing to rise to new heights, although sensitivity to global events, such as the emerging Coronavirus, remains.

Investor participation only continues to increase, with new products such as Sharesies providing avenues for younger investors to tap into the market.

New Zealand issuers' attempts to engage with their investor universe are also improving – in line with more mature markets. There are many benefits of this, from protecting issuers against hostile takeovers, to reducing combative-style shareholder activism, which is on the rise offshore.

A sure sign of NZX's better bill of health was found in 2019's banner listing, the Napier Port IPO, which we understand received strong Australian institutional investor support in spite of opting not to dual list on the ASX. This indicates a confidence in the NZX not seen in previous years.

> "Market performance remains strong and somewhat insulated from overseas volatility, although sensitivity to global events, such as the emerging Coronavirus, remains."

2019/2020 equity capital markets snapshot

Reflections and predictions for New Zealand's equity capital markets

	2020 Predictions	2019 Reflections
IPO activity	• More IPO activity; though still subdued due to the low interest rate environment and a strong focus on yield rather than growth. • Companies with long-term shareholders seeking to access the NZX as an exit opportunity the most likely IPO candidates.	• There were two equity IPOs and nine fund IPOs (including eight Smartshares funds listed). • The Napier Port IPO was undoubtedly the highlight of 2019 listings, with a number of successful features including a priority pool for local residents and ratepayers.
Market performance and composition	• The S&P/NZX 50 will maintain its relatively strong performance, avoiding much of the impact of global market volatility. • A trend masked by the board consolidation – the decline of the number of issuers on the Main Board – will continue in 2020.	• New Zealand's stock exchange yet again outperformed major global indices. The benchmark S&P/NZX 50 Gross index rose 30.4% over the year. • The long-awaited board consolidation on 1 July 2019 saw the junior NZX equities boards – the NZAX and the NXT – consolidated into the NZX Main Board.
From public to private	• Take-private transactions will continue as many NZX listed issuers are trading below NTA per security. The year begins with two significant take-private transactions in the pipeline – Metlifecare and Augusta Capital.	• NZX was once again a happy hunting ground for takeovers. Five NZX Main Board issuers were taken private.
Shareholder activism and stakeholder engagement	• More companies will engage in defensive play – including improving investor relations – as a result of increased take-private transactions. This will bring New Zealand into line with more mature markets.	• New Zealand issuers' appreciation of the importance of investor relations grew, with many improving their efforts through dedicated investor days and other public relations activities. • New Zealand Oil & Gas provided a very public example of both the power of shareholder activism and the importance of takeover response strategies.

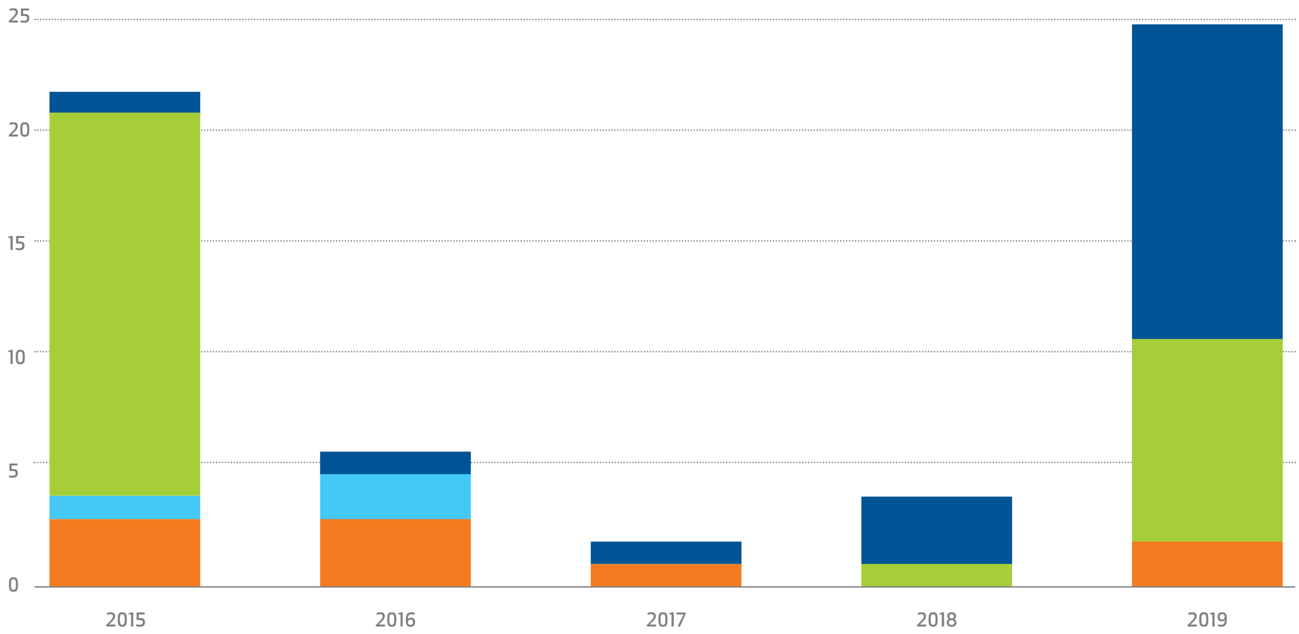
	2020 Predictions	2019 Reflections
Investor participation	• Alternative capital markets platforms and innovative services for smaller investors to participate in public capital markets will continue to rise in popularity, with Link's ShareMeUp service recently launched and MyCap's trading platform planned.	• New services such as Sharesies help to drive an increase in the number, but a reduction in the size, of NZX trades on market.
Capital Markets 2029	• Adoption by industry and NZX of many of the recommendations made by the Capital Markets 2029 initiative.	• Analysis conducted by the Capital Markets 2029 taskforce led to a list of recommendations in various fields, from tax to education to overseas investment law.
Trends in capital raisings	• "Supersized" share purchase plans *(SPPs)* following a placement will continue to be popular, but we will also see Accelerated Rights Entitlement Offers *(AREOs)* and rights issues continue. The death of the AREO predicted in Australia will not play out here yet.	• A placement accompanied by a "supersized" SPP, where the maximum participation is higher than the $15,000 per shareholder limit provided for under the Listing Rules emerged as a new offer structure used by Precinct Properties and Kiwi Property Group, amongst others.

Visit our website to see members of Chapman Tripp's ECM team discuss their reflections and predictions in our latest video.

2020 IPO activity to build on Napier Port success

A successful listing paves the way for a stronger year ahead

NZX Main Board IPOs and other listings



Notes to understanding this graph:

Migrations from NZAX/NXT
Migrations from NZAX/NXT only include issuers which have transitioned from being listed on the NZAX or NXT to the NZX Main Board.

ETFs and other managed funds
ETFs and other managed funds primarily includes NZX's Smartshares funds, as well as other managed funds that have listed on the NZX Main Board.

Compliance listings
Compliance listings or "direct" listings include issuers that have become listed on the NZX Main Board without raising new capital. These listings do not include so called "backdoor" or "reverse" listings, where a new business is effectively listed using a shell company that is already on the NZX Main Board.

IPOs
An IPO is where an issuer undertakes a regulated offer of equity securities under a product disclosure statement and becomes listed on the NZX Main Board at the same time.

Lauded as a win-win for local government and investors, the Napier Port IPO was undoubtedly the highlight for New Zealand's equity capital markets in 2019.

After a series of public consultations the Hawke's Bay Regional Council decided to partially privatise the Napier Port in order to fund the cost of a significant wharf extension. The Council raised $234m by effectively selling 45% of the Port and retaining a 55% shareholding through the Hawke's Bay Regional Investment Company. $110m of the proceeds were provided to the Port for use in developing the new wharf, with the remaining proceeds retained by the Regional Council for investment.

Interestingly, the Napier Port IPO drew on aspects of other offers we have seen over the past few years, most notably the New Zealand King Salmon offer. As with King Salmon, the Port IPO featured a priority pool for local residents and ratepayers, as well as for Port employees and eligible iwi groups. Importantly, this offer structure meant that key local stakeholders were prioritised for allocations in the offer. This structure demonstrates how IPOs can be effectively used to enhance a company's social licence to operate by encouraging local ownership.

Bucking the trend of most recent IPOs, the Port did not pursue an ASX dual listing. Despite its NZX only listing, we understand there was still strong Australian institutional demand for the offer – putting paid to the notion that an ASX listing is necessary to attract Australian institutional investor support in a successful IPO. The Port has also had strong after-market performance.

2019 saw another IPO – Cannasouth, the medical cannabis research company. Medical cannabis is a sector that has attracted a lot of investment interest worldwide. It's also drawn attention from regulators, with ASX noting in 2018 that it had seen heightened interest from persons wishing to list entities involved in, or existing listed entities seeking to expand their operations into, medical cannabis. ASX noted that medical cannabis raises significant legal and public policy issues, and that these businesses tend to be at a very early stage with no operating history, meaning that they may not be suitable to be publicly listed.

In New Zealand, the legislative framework for medical cannabis was not yet finalised when Cannasouth listed (it has been recently), causing some market commentators to question its pricing and timing for listing.

Booster also listed its private land and property fund in 2019. This was the first fund listing since Salt's carbon fund listing that was not an NZX SmartShares listing. This follows the amendment of the Listing Rules last year to make it more straightforward for managed funds to list, and its success means we expect to see more fund listings in the year ahead.

> "Bucking the trend of most recent IPOs, the Port did not pursue an ASX dual listing."

Key trends for 2020 listing activity

On the whole, as previously predicted, 2019 was a better year than 2018 with some modest IPO activity and more fund listings

> "Next year, we predict there will be more IPO activity than 2019, though expect it to be still somewhat subdued given the low interest rate environment and a strong focus by investors on yield rather than growth stocks."

IPOs

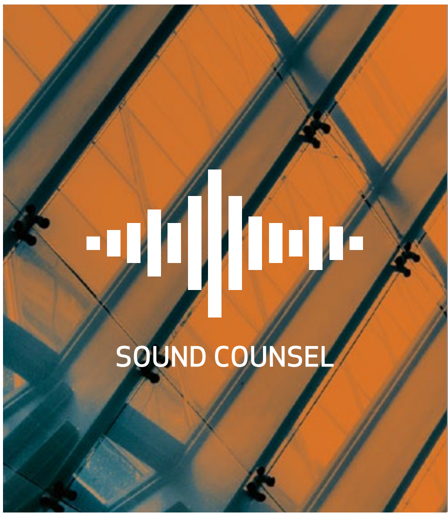
In total, 2019 saw two equity IPOs and nine fund IPOs (including eight Smartshares funds listed). While it is not quite a return to the IPO numbers we saw in 2013 and 2014, it is certainly a marked improvement from 2018, when there was no IPO activity. Next year, we predict there will be more IPO activity than 2019, though expect it to be still somewhat subdued given the low interest rate environment and a strong focus by investors on yield rather than growth stocks.

The New Zealand IPO market is primarily driven by vendors seeking exits, rather than companies looking to fund growth. Given the lack of IPOs over the last two years, we expect there are some long term shareholders who have been biding their time that may see 2020 as the right time to access the NZX as an exit opportunity. NZX50 market performance remains strong, outperforming its global peers, and in 2019 almost $2 billion of secondary equity capital was raised by NZX issuers, demonstrating no shortage of investor demand.

On the flip side, recession murmurings continue and we expect some ongoing volatility in the IPO market globally during 2020 – the early market impact of the Coronavirus is a good reminder of the sensitivity of financial markets to unexpected global events.

In 2019 the Latitude and WeWork IPOs were pulled in Australia and the US respectively after listing aspirants went public with the offer, but were unable to secure institutional investor support at the valuation sought by the vendor. This is a very high-profile way to fail.

Given we have less listings, we consider it unlikely this trend will percolate down to New Zealand. But, a contagion effect that causes nervousness about volatility in IPO markets may lead to some listing aspirants concluding it is not yet a good time to list.



Capital Markets 2029 is an industry-led group, sponsored by the NZX and Financial Markets Authority. On 9 September 2019, it released its much anticipated report that takes a 10-year view and identifies steps that can be taken by the government, regulators and industry participants to strengthen New Zealand's capital markets.

Visit our website to listen to our podcast series providing further input from Capital Markets 2029 Chair, Martin Stearne, Steering Committee member and Chapman Tripp partner Rachel Dunne, group member and EY Partner Andrew Taylor, and NZX General Counsel Hamish Macdonald.

Direct listings

In 2020, we also expect to see some direct listings – where a company lists on a stock exchange and doesn't raise new capital at the time of its listing. Instead, existing shareholders sell down, creating initial liquidity and realising some of their investment, with capital subsequently raised as required. 2019 saw a high profile example of this in the US where Slack, a workplace messaging app bypassed an IPO with a direct listing.

A recommendation made in the Capital Markets 2029 (*CM29*) report is the greater promotion of alternative pathways to listing, such as direct listings. The CM29 report also suggests that the requirement to provide prospective financial information should be removed for all listings, and noted this requirement may be a particular impediment to direct listings where no new capital is sought.

ESG products

2020 may also see more environmental, social and governance (ESG) products developed and brought to the public markets.

Five of the Smartshares funds that listed last year were specifically ESG funds. 2019 also saw a new ESG debt product deployed – an ESG linked loan from ANZ to Synlait, where the interest rate payable by Synlait is affected by Synlait's performance under Sustainalytics' ESG Risk Ratings assessment. 2020 has already seen Contact Energy agree a similar sustainability linked loan with Westpac NZ.

Green bonds have been a feature of debt capital markets for some time. We believe equity issuers may look for more novel ways to access ESG-focussed funds, beyond simply improving the underlying ESG performance of their business. There's also potential for a New Zealand index for companies that meet specific ESG criteria, a popular product in offshore markets.

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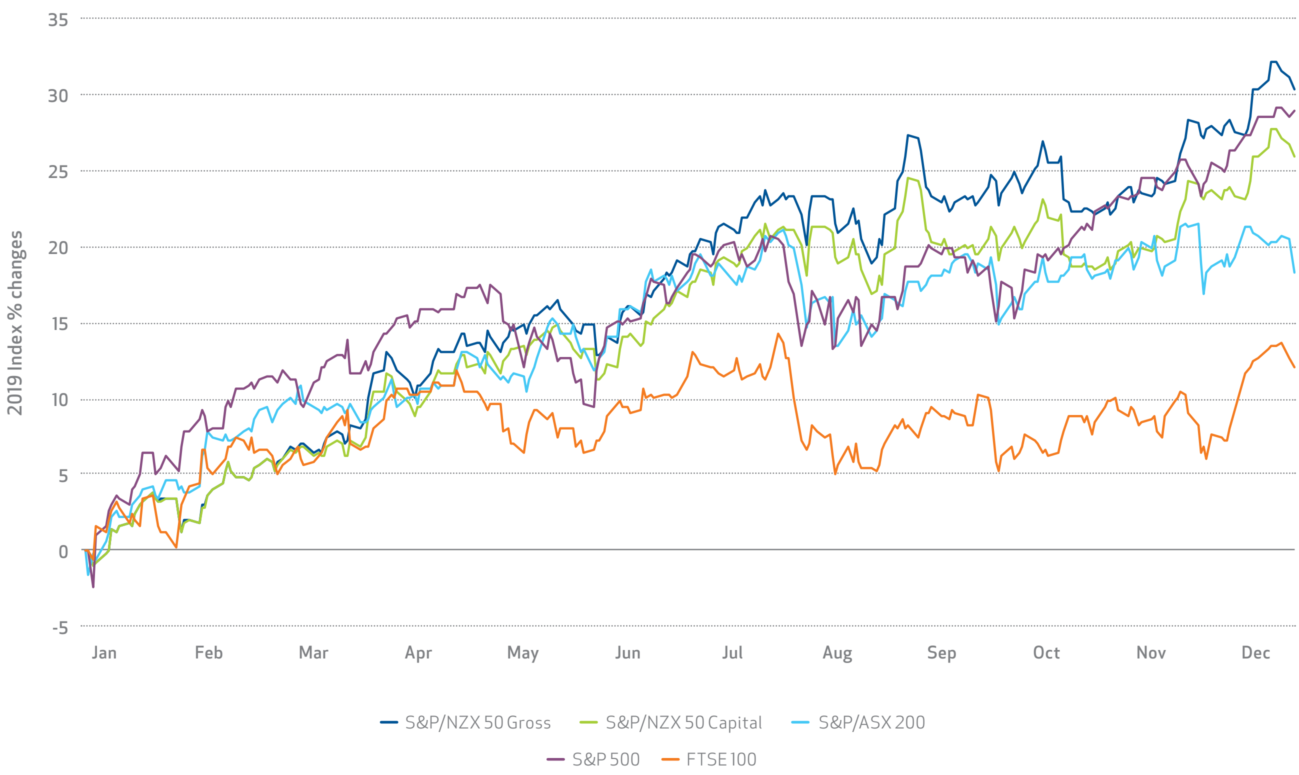
Market performance and composition

Strong performance with new records in sight

Market performance during 2019



In 2019, the NZX maintained its strong performance, with the market continuing to outperform many other international markets. The benchmark S&P/NZX 50 Gross index rose 30.4% over the year.

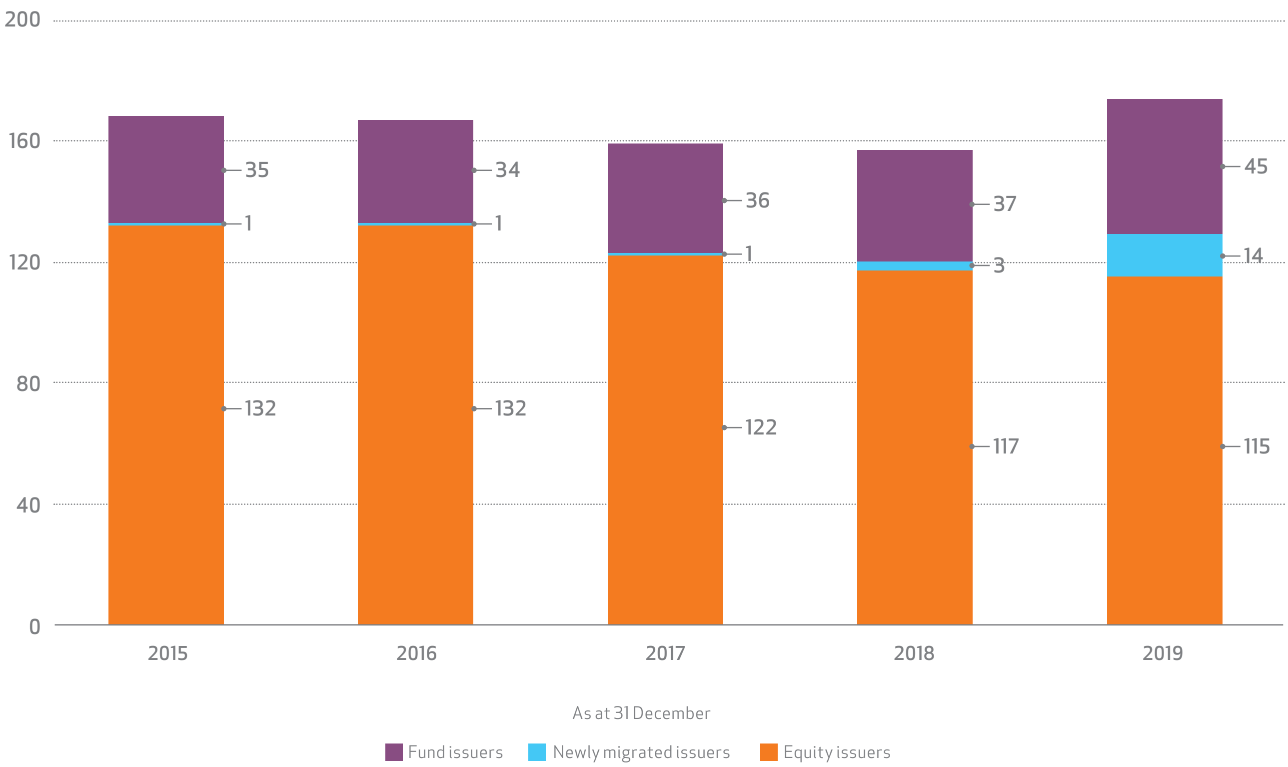
2020 is off to a strong start, with the S&P/NZX 50 gross index very close to hitting a new milestone – pushing through the 12,000 point mark.

The sustained strong performance of the NZX is positive for IPO aspirants. However, despite the strong performance of the benchmark S&P/NZX 50 index, there continued to be a number of take private transactions throughout 2019 at a premium to the market price, showing that perhaps not all companies are as fully priced as the headline figures may suggest.

Despite general elections in both New Zealand and the US in 2020, recent history has shown the NZX 50 relatively immune to geopolitical uncertainty. How New Zealand's financial markets weather the storm of Coronavirus will be important.

Migration to the Main Board masks a further decline

NZX Main Board issuers



The long-awaited board consolidation on 1 July 2019 saw all NZX junior equity boards – the NZAX and the NXT – consolidated into the NZX Main Board. New Zealand now has a single listed equities market.

The NZAX and NXT were shut down and all issuers migrated to the Main Board. Whether they stay remains to be seen. Future Mobility Solutions, an NZAX migrant, quickly delisted to move to the Unlisted Securities Exchange (*USX*).

Ignoring these forced migrations, the NZX Main Board continued its trend since 2016 of a decline in the number of equity issuers, with the number of fund issuers continuing to rise. In 2020, we expect to see this trend continue with a further minor decrease in the number of equity issuers, and more funds listed.

From public to private

Barbarians at the gate – de-listings likely to continue

There were a significant number of delistings during 2019, for a variety of reasons. Five were take-private transactions:

- The Mercantile Investment Company was subject to an off-market takeover by Sandon Capital Investments Limited
- Trade Me Group Limited entered into a scheme of arrangement with Titan AcquisitionCo New Zealand Limited
- Methven entered into a scheme of arrangement with GWA
- Orion was subject to a takeover/compulsory acquisition by the already majority shareholder, Grafton Health Holdings, and
- SLI was subject to a takeover by Texas-based ESW Holdings.

We also saw CBL Corporation, the owner of credit insurer CBL Insurance, delist following court-ordered liquidation, and Future Mobility Solutions move to the Unlisted Securities Exchange (*USX*).

Metlifecare announced at the tail end of 2019 that it had entered into a scheme implementation agreement, under which European investor EQT proposes to take Metlifecare private. If the conditions are satisfied, Metlifecare is expected to be delisted in May this year.

And, already announced this year as we go to print is a proposed takeover of Augusta Capital by ASX listed Centuria Capital Group.

We predict more take-private transactions in 2020, due to the fact that a number of listed companies are trading quite significantly below their net tangible assets (NTA) per security.

There are a number of active private equity investors looking to the New Zealand listed market to identify targets that are trading at very low multiples and making what some might describe as opportunistic takeover offers.

A 10 year view of IPO activity shows that 21% of all IPOs over the last decade are no longer listed due to take-private transactions. A further 9% of those IPOs are also no longer listed due to insolvency processes.

"We predict more take-private transactions in 2020, due to the fact that a number of listed companies are trading quite significantly below their NTA per security.

NZX Main Board IPOs in the last 10 years – where are they now?

Year	Company	Offer Price	Share Price 31/12/2019	
2010	trilogy	Taken private – delisted January 2018		
	DNZ Property Fund	Forms part of Stride Stapled Group		
2011	Summerset Retirement Villages	$1.42	$8.90	↑
	trademe	Taken private – delisted May 2019		
2012	MOA BREWING CO.	$1.25	$0.30	↓
2013	Mercury	$2.50	$5.05	↑
	Meridian.	$1.50	$5.00	↑
	SLI SYSTEMS	Taken private – delisted January 2019		
	WYNYARD	In liquidation – delisted May 2017		
	Synlait	$2.20	$8.89	↑
	Z ENERGY	$3.50	$4.40	↑
	airwork	Taken private – delisted November 2017		
2014	genesis	$1.55	$3.03	↑
	INTUERI Education Group	In liquidation – delisted October 2017		
	serko	$1.10	$4.95	↑
	Gentrack	$2.40	$3.75	↑
	ikeGPS	$1.10	$0.90	↓

Year	Company	Offer Price	Share Price 31/12/2019	
2014	Scales	$1.60	$5.01	↑
	METRO Performance Glass	$1.70	$0.29	↓
	VISTA GROUP	$2.35	$3.60	↑
	EROAD	$3.00	$3.16	↑
	ORION HEALTH	Taken private – delisted March 2019		
	evolve education group	$1.00	$0.18	↓
	ArvidaGroup	$0.95	$1.92	↑
2015	FLIWAY	Taken private – delisted January 2018		
	CBL	In liquidation – delisted November 2019		
	AFT pharmaceuticals	$2.80	$3.50	↑
2016	Tegel	Taken private – delisted October 2018		
	investore	$1.49	$1.82	↑
	New Zealand King Salmon	$1.12	$2.05	↑
2017	OCEANIA HEALTHCARE	$0.79	$1.32	↑
2019	cannasouth	$0.50	$0.60	↑
	NAPIER PORT	$2.60	$4.16	↑

Note: excludes listed funds.

Shareholder activism and stakeholder engagement

It's not just about the sausage rolls…

It is important for listed issuers to ensure they are actively engaging with the investor universe. There are important benefits for issuers in doing this:

- Building a relationship with the full spectrum of investors, from major institutional holders, to small retail shareholders, may prove useful in defending against hostile takeovers.
- Proactive shareholder engagement may help head off shareholder activism, a key trend emerging in Australasia.

A number of New Zealand listed issuers are upping their game in terms of engagement with existing shareholders and potential investors through the use of dedicated investor days, better outreach to the analyst community, seeking out better research coverage and other public relations activities. NZX is also playing a part – taking some of its listed companies to other markets, such as Singapore in 2019, to profile them to offshore investors.

There is certainly room for improvement – New Zealand listed issuers have not previously been as sophisticated in their investor relations and industry engagement as those in other more mature markets.

Shareholder activism – could New Zealand prove more fertile than Australia?

Shareholder activism directed at listed issuers is on the rise in Australia and New Zealand. In addition to the perennial issues of board composition, share price performance and takeover proposals, which generate activist interest, we are seeing increased focus by activists on climate change and ESG matters, especially in Australia.

Australian activist group Market Forces was successful in 2019 in lodging climate change related resolutions to be heard at shareholder meetings with nine large ASX listed issuers, and is already seeking support to lodge resolutions for three meetings in 2020. None of the resolutions proposed by Market Forces were successfully passed, but the goal of raising awareness and soliciting a public response from the targeted listed companies on their approach to climate change was certainly achieved.

The hurdle to lodge a shareholder proposal in Australia is relatively high – at least 100 shareholders, or one or more shareholders holding at least 5% of the votes, must support the proposal before it needs to be put to shareholders. In contrast, in New Zealand, a single shareholder may propose a resolution.

In addition, New Zealand law more readily accommodates non-binding "advisory" resolutions that seek to put pressure on the company to act in a certain way, rather than compelling the board to do so.

Given the ease of putting a shareholder proposal in New Zealand, and the continued focus on ESG matters, we may see greater numbers of shareholder proposals emerging in 2020. Helpfully, one of the changes to the Listing Rules made in 2019 was a removal of the requirement for NZX to review a notice of meeting where a shareholder proposal was received, which may reduce the administrative burden that this trend would otherwise impose on companies.

NZ Oil & Gas – minority shareholders defeat board endorsed takeover

In 2019, minority shareholders of New Zealand Oil & Gas rejected an offer from the company's majority owner, O.G. Oil and Gas, to take over the company. O.G. Oil and Gas requested a special meeting be called to vote on a resolution to acquire the 30% stake in the company they did not yet hold.

In the lead up to the meeting, the independent directors initially recommended the offer to shareholders at $0.62 per share. Disgruntled minority shareholders raised concerns with the Takeovers Panel, the media and other likeminded shareholders, and the offer price was increased to $0.74 per share. Despite the increase in price, the scheme failed to meet the 75% threshold required to pass, showing the importance of keeping smaller shareholders on side.

The fallout from the failed scheme saw two shareholder nominated directors seek appointment, as well as a shareholder proposal for further information to be released in relation to one of the company's projects – none of these initiatives were supported by the board, and did not pass, showing there are some limits to the power of shareholder activism.

New Zealand Shareholders' Association (*NZSA*)

The NZSA is a key voice on behalf of retail shareholders. The NZSA publishes a range of resources that are relevant to shareholder engagement with listed companies, including policy statements on common actions undertaken by listed companies. In addition, the NZSA distributes voting recommendations to its members on the resolutions put forward at many listed company annual meetings.

One recent development is the introduction of "standing proxies" – these enable shareholders to appoint the NZSA as their proxy for all listed company meetings, rather than requiring shareholders to appoint them as a proxy for each meeting. This reduces the administrative burden involved for retail shareholders and may allow for them to have more effective representative at meetings.

Given the increased prominence of the NZSA, and the increased voting power it will undoubtedly hold through standing proxies, it becomes ever more important for listed issuers to be on the right side of the NZSA. Early engagement with the NZSA on proposed resolutions prior to release of a notice of meeting may allow concerns to be addressed in private, rather than in a public forum after the materials have been released.

Increasing investor participation in public capital markets

Lower fees and more trades

We have seen some innovative developments in 2019 to encourage broader participation in public capital markets. New Zealand examples include Sharesies and ShareMeUp, which are appealing specifically to younger investors. We are picking that this is a trend that will continue as market participants look to tap into a younger generation and remove unnecessary red tape from the investing experience.

Services like Sharesies, Hatch and ShareMeUp enable little-but-often type of investing in a way that is more cost effective than traditional methods of investing in public capital markets. Issuers sign up and the services parcel up trades for people buying small holdings of shares in participating companies so that the brokerage costs are minimised. Normally, a minimum amount of brokerage is charged on each trade by a retail investor, making small trades prohibitively expensive.

One of the recommendations in the Capital Markets 2029 report was to streamline the Anti-Money Laundering (*AML*) process, by removing some of the administrative duplication that turns new and younger investors off the capital markets. Through the use of mobile apps and other technology, services like Sharesies and ShareMeUp are easier to sign up to and access than traditional share brokers, but there is still a lot of AML paperwork that could be minimised.

In terms of trades on the NZX, we are seeing smaller trades but more of them, with an increase of 94.4% in the total number of equity trades in 2019, and a decrease in average on-market trade size of 37.7%. We think this, in part, is being driven by these new services and products.

The percentage of value traded on-market has also continued to rise to 63% in 2019, a 12.3% increase from the prior year.

Sharesies

Sharesies provides access through a mobile app to selected Smartshares exchange traded funds (*ETFs*) and managed funds from Pathfinder, AMP Capital and PIE Funds.

In 2019, Sharesies also launched a service to allow investors to invest directly in individual companies and ETFs on the NZX Main Board. As part of this, Sharesies became admitted as an NZX cash market trading and clearing participant, so that it could make these trades directly (rather than via another broker).

One way in which Sharesies has made investing on the NZX more accessible is by offering fractionalised amounts of investments – this means that investors can buy the exact amount of the investment they are after, rather than having to buy in multiples of the share price.

ShareMeUp

ShareMeUp is a micro-investing app to provide investors access to selected NZX issuers in a cost effective way. ShareMeUp launched in late 2019, and is operated by Link Market Services, a share registrar operator in New Zealand. ShareMeUp is aimed at investors who wish to invest $50 to $500 on a regular basis.

One way in which ShareMeUp has made investing on the NZX more accessible is by offering low fees and encouraging dollar cost averaging through regular investments, allowing investors to minimise the risk of investing into a falling market by smoothing out the price paid for their shares. ShareMeUp allows users to select the frequency of their investments (weekly, fortnightly or monthly), and then executes the relevant trades on a weekly basis.

Alternative capital markets platforms

Filling the gap that has been left by NXT and NZAX

Increased investment and trading in private companies is a global trend. Facilitating trading in private companies can be a precursor to an IPO on more traditional capital markets. Technology has allowed private capital raising and trading platforms to operate more efficiently than was previously possible, and has reduced the gap in sophistication between the traditional, mainstream financial markets and alternatives.

These alternative platforms may help fill the gap left by the NXT and NZAX, the junior markets disestablished by the NZX in 2019, and provide a stepping stone to the NZX Main Board.

Crowdfunding

- Equity crowdfunding platforms allow issuers to raise up to $2m from retail investors without a formal disclosure document.
- Instead, the offer must be made through a licenced equity crowdfunding platform.
- Certain equity crowdfunding platforms have started operating secondary markets to allow investors to trade their shares and increase the liquidity of their investment.

Syndex

- Syndex describes itself as an online exchange for proportionally owned assets, such as property syndications. Syndex offers investors the ability to invest in new primary offers for syndicates, and to trade existing interests they may hold in issues listed on Syndex.
- Syndex also offers a range of other investment opportunities, including private equity type investments and early stage growth companies.

MyCap Markets

- MyCap Markets is establishing a regulated marketplace to allow for trading in shares that are not listed on a traditional stock exchange. MyCap Markets will operate on a periodic trading basis, so that investors can trade equity and debt securities through auctions held at least once a year.
- By allowing for trades to be conducted on a periodic basis only, the burden on issuers of complying with continuous disclosure is lessened, as they need only disclose relevant information around the time of each auction, rather than on a continuous basis.

USX Unlisted Securities Exchange

- The Unlisted Securities Exchange (*USX*) is a financial product market, intended to provide a cost-efficient and simple share trading platform. The total market capitalisation of USX was approximately $3b as at October 2019.
- As USX is not a licensed financial product market under the Financial Markets Conduct Act 2013, the usual protections in relation to insider trading, market manipulation, continuous disclosure and so on do not apply, but issuers and traders remain subject to the fair dealing regime.

Delivering a 10-year vision for capital markets

Recommendations from the Capital Markets 2029 Report

The industry-led initiative Capital Markets 2029 – a body formed to assess how New Zealand's capital markets are working and provide recommendations for improvements – released its report last year. *Growing New Zealand's Capital Markets 2029* provides a vision and growth agenda to promote stronger capital markets in New Zealand.

Key trends identified in the report included:

- New Zealanders were encouraged to save by the implementation of KiwiSaver, however it fostered investment in lower-growth assets
- The public market is effective for larger companies, but less so for smaller companies, and is still struggling to attract listings, and
- Private markets are functioning efficiently but perhaps not serving the full range of investors or investment stages.

Recommendations were made across a broad spectrum, from tax to education, but were ultimately interdependent.

While there is no substitute for reading the report in full, some of the recommendations that we feel have a real chance of making a difference to New Zealand's equity capital markets include:

- Allow KiwiSavers to invest with multiple providers – this may encourage greater investment into niche areas of the market.
- Simplify disclosure requirements for regulated offers by reviewing the level of information required within the product disclosure statement as compared to the offer register. Cutting back the information that must be provided to retail investors would better reflect the way that retail fact sheets are currently being used for IPOs in New Zealand.
- Establish a centralised process for AML to remove barriers to entry and simplify signing up to innovative service providers, such as Sharesies or ShareMeUp, even further.
- Revise the definition of wholesale investor to explore whether greater self certification can be used. As noted, alternative capital markets platforms have continued to expand, and many of these feature investments which are only available to wholesale investors.
- Consider local government reform to ensure local councils consider all funding options for necessary infrastructure. We believe the Napier Port IPO has been a win-win for local government and investors, so this model should be explored to help fund New Zealand's significant infrastructure needs.

"Our work as a Committee was supported by a huge number of participants in New Zealand's capital markets. The industry gave freely and frankly their time and views. Achieving the report's vision is now in our hands, and I am positive we will see traction in 2020"

Chapman Tripp partner and equity capital markets expert Rachel Dunne was the only legal representative on the 10 person Capital Markets 2029 Steering Committee.

OIO treatment for listed companies

Sanity prevails at last?

A perennial source of frustration for NZX listed companies has been the application of the Overseas Investment Act 2005 (*OIA*) to NZX listed issuers. The OIA currently treats an issuer which has 25% or more ownership by "overseas persons" as an overseas person, requiring consent under the OIA to acquire certain assets or interests in land.

The three main difficulties faced by NZX listed companies have been that:

- Their ownership is constantly changing, as shares can be traded every day on which the NZX is open for trading.
- The definition of overseas person is broad and complicated – it captures investors such as KiwiSaver funds investing on behalf of New Zealanders and makes it impossible for listed companies to tell whether or not some shareholders are overseas persons.
- The ownership of listed companies tends to be oblique, due to the widespread use of the New Zealand Central Securities Depository (*NZCSD*) and other custodians or nominees. Only the person holding legal title need be registered on the share register, with other relationships generally not required to be disclosed. There is also no requirement that a shareholder disclose to a listed company whether or not they are an overseas person.

The combined effect is that it simply isn't practicable for a listed issuer to accurately identify whether it is an overseas person on any given day (with a few exceptions, such as where there is a single major shareholder that would by itself make the issuer an overseas person).

Thankfully, changes appear to be imminent as part of a wider review of the OIA. The Government has announced that it intends to change the rules that apply to listed issuers. The supporting materials released so far suggest that it will effectively shift the ownership threshold so that a listed company will be an overseas person if they are either:

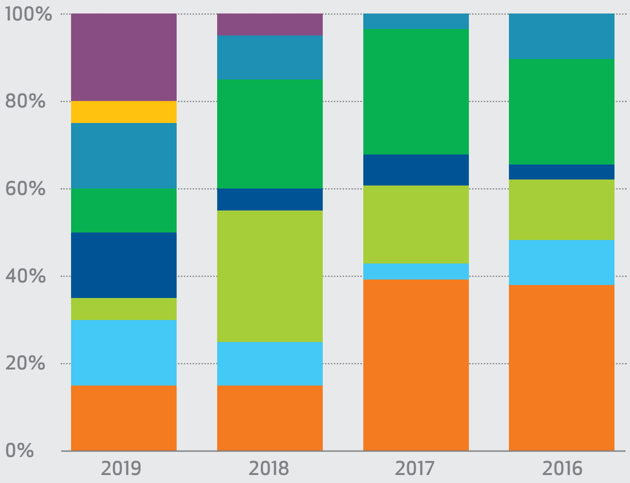
- 50% or more owned by overseas persons; or
- 25% or more owned by overseas persons who each have a 10% or more interest in the issuer.

The Government has also indicated that greater options will be available to appropriately treat KiwiSaver and other managed investment schemes that are investing on behalf of New Zealanders as New Zealand persons for the purposes of the OIA.

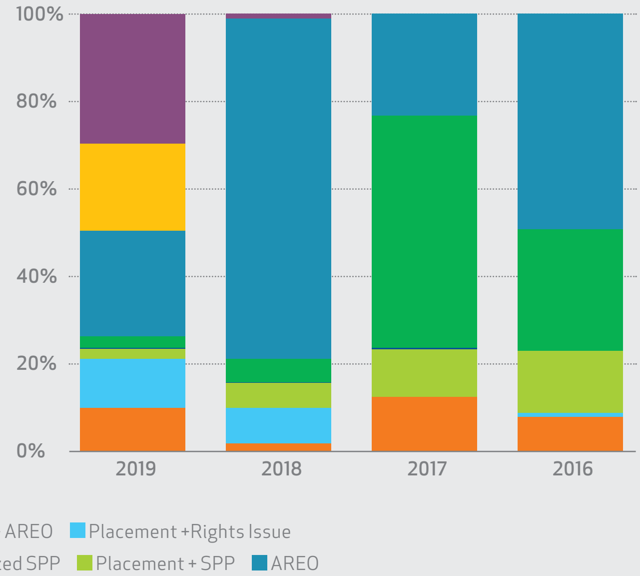
While the proposed reforms are heading in the right direction, it will not be a panacea for listed issuers, as it does not fully address the underlying issues identified above.

Trends in capital raisings

Types of capital raising over time by number



Types of capital raising over time by dollar amount



A new offer structure rose to prominence in 2019 – a placement accompanied by a "supersized" SPP. Under this structure the maximum SPP participation is higher than the $15,000 per shareholder limit provided for under the Listing Rules. Issuers, such as Precinct Properties, offered SPP participants the ability to subscribe for up to $50,000, with the excess above $15,000 per shareholder counting against the issuer's placement capacity. This structure is perceived as fairer to retail investors, because with the larger size, more people can take up their pro rata entitlement or increase their shareholding.

The $15,000 per shareholder SPP limit was not adjusted in 2019's extensive Listing Rules rewrite, although the placement capacity was decreased from 20% to 15%. In Australia, the SPP limit was recently doubled to $30,000. We believe NZX should follow suit.

Another change in 2019's new Listing Rules is that a shortfall under an SPP cannot be issued to an underwriter or other investors without counting against the issuer's 15% placement capacity. As a result SPPs are typically no longer underwritten. In contrast, for a pro-rata rights issue, the shortfall can be issued under a shortfall bookbuild or to an underwriter without using the 15% placement capacity. This means that where it is necessary to ensure the full amount of money is raised, such as to fund an acquisition, issuers have tended to use rights issues, with SPPs tending to be reserved for money that will be used for general corporate purposes.

There have also been changes under the Listing Rules to streamline the process for rights issues – the timetable has been significantly shortened and accelerated offers are also expressly addressed, rather than through waivers.

Australian commentary around the death of the AREO does not seem to be playing out here – AREOs are still a popular option for offers as they offer some of the benefits of a placement, while still being seen as fairer to all shareholders. Notable AREOs in 2019 included Kathmandu's $145m raising to partially fund the acquisition of Rip Curl and Tilt Renewable's $274m raising to fund the development of a major wind farm in Australia.

We expect to see more supersized SPPs following a placement in 2020, but we also pick AREOs and rights issues will continue, particularly where issuers are raising capital for acquisition purposes. In the face of stiff criticism from the NZSA, issuers have been weary of doing a placement alone unless there is a compelling reason for doing so.

Significant variety in capital raising structures in 2019

Rights Offer 2019 examples include: • TOWER's $47.2m rights issue • thl's $50m rights issue, combined with a $30m placement	A pro rata offer made to all eligible shareholders (typically limited to those in New Zealand and other select jurisdictions), under which each shareholder has the right to subscribe for a number of shares in proportion to their existing shareholding. Shareholders who do not wish to take up their rights, or who are ineligible to do so, may receive some value for their rights by trading them where rights are quoted or through a shortfall bookbuild if the issuer chooses to conduct one. There is no limit on the amount that can be raised under a pro rata rights issue. The NZSA has been vocal in their view that pro rata rights offers are the most equitable form of capital raising for all shareholders.
Accelerated Rights Offer 2019 examples include: • Tilt's $274m AREO • Kathmandu's $145m AREO	As with a rights offer, but money is received from institutional investors sooner (hence the "acceleration") and both an institutional and retail bookbuild is conducted to allocate any shortfall, with any net proceeds returned to shareholders who do not participate. AREOs are still seen as fair to all shareholders, but are popular with issuers that have a large institutional investor presence on their register.
Placement 2019 examples include: • EBOS' $175m placement • Infratil's $100m placement, combined with a $300m AREO	An offer on a non-pro rata basis to one or more selected investors. Placements can be completed very quickly with minimal documentation. An issuer may only issue up to 15% of its shares under a placement, calculated on a rolling 12 month basis.
Share Purchase Plan 2019 examples include: • Serko's $5m SPP, combined with a $40m placement • New Talisman's $3.6m SPP	An offer under which each eligible shareholder may subscribe for up to $15,000 of shares. SPPs are often used in connection with a placement to allow retail investors to participate, albeit on a non-pro rata basis.
New **Supersized SPP** 2019 examples include: • Precinct Properties' $21.8m supersized SPP, combined with a $130m placement • Kiwi Property Group's $16.6m supersized SPP, combined with a $180m placement	An offer under which each eligible shareholder may subscribe for up to a certain dollar amount of shares in excess of the $15,000 limit for an SPP (such as $30,000 or $50,000). This allows more retail investors to participate in an offer following a placement in a way that is more likely to enable them to maintain their pro rata holding. To the extent that the amount subscribed by each shareholder is in excess of the $15,000 SPP limit, an issuer will need to use its 15% placement capacity.

Time for an ASXit?

Dual listing no longer necessary to drum up institutional investor interest

The traditional wisdom has always been that an ASX listing opens an issuer up to a broader universe of potential institutional investors, or just potential investors generally. This has been cited as particularly relevant for Australian institutional investors who are restricted in investment mandates from investing in issuers that are not ASX listed. That wisdom has been challenged by the Napier Port IPO, which received strong Australian institutional support without an ASX listing.

Other advantages of an ASX listing can include greater profile in Australian financial media, who naturally tend to follow ASX listed companies more closely, and making it easier for Australian based staff to trade in shares in Australian dollars and through ASX sharebrokers with whom they may have an existing relationship.

However, NZX listed issuers are experiencing the effects of some major disadvantages to a dual listing. A developing trend is the availability and cost of D&O insurance. Where insurance is available, premiums are significantly higher for dual-listed companies due to the funded class action environment in Australia that has been strongly directed towards listed issuers. In addition, a dual-listed issuer may be open to breach of Australian law, which adds additional compliance obligations that can be complex.

ASX listing fees are also significant and much higher than NZX fees for equivalent sized issuers even where trading activity remains concentrated on the NZX. The graph below demonstrates that for many of New Zealand's largest dual listed companies, NZX remains the more liquid exchange by a significant margin, making it harder to demonstrate the value of an ASX listing to stakeholders.

It needs to be a case by case assessment, but the boards of some of the larger NZX/ASX listed companies could challenge, when speaking with investors, whether an ASX listing is still necessary. Without it, they can save costs, access better insurance on better terms and better pricing, and avoid a level of complexity and potential compliance risk within the business.

Trading venue for dual-listed S&P/NZX 50 companies during 2019

Chapman Tripp's equity capital markets team

New Zealand's most highly regarded equity capital markets legal team

Our market-leading equity capital markets team has a reputation for acting on the country's most significant and complex deals, as well as most of New Zealand's recent initial public offerings (IPOs) and NZX Main Board listings. Our unrivalled track record means that we are best placed to help clients avoid the risks and obstacles with any capital markets transaction – such as choosing the wrong offer structure or a due diligence process that is not fit for purpose.

Our experience ranges across all aspects of equity capital raisings including pre-offer structuring, IPOs, secondary capital raisings, and institutional placements and block trades.

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by NZX listed companies in 2019

We have advised on

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Capital Markets Deal of the Year

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Chapman Tripp is New Zealand's leading full-service commercial law firm, with offices in Auckland, Wellington and Christchurch. Our lawyers are recognised leaders in corporate and commercial, mergers and acquisitions, capital markets, banking and finance, restructuring and insolvency, litigation and dispute resolution, employment, government and public law, intellectual property, telecommunications, real estate and construction, energy and natural resources, and tax law.

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