

## Financial Markets Conduct (Gordian RunOff Limited) Exemption Notice 2017

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Gordian RunOff Limited) Exemption Notice 2017.

#### 2 Commencement

This notice comes into force on 14 April 2017.

#### 3 Revocation

This notice is revoked on the close of 30 April 2018.

#### 4 Application

An exemption granted by this notice applies to the accounting periods of Gordian that end on 31 December 2016 and 31 December 2017.

#### 5 Interpretation

(1) In this Notice unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**approved auditor** means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements comply with Australian GAAP

**Australian GAAP** means generally accepted accounting principles required or permitted in Australia

**External Reporting Board** means the independent Crown Entity continued under section 11 of the Financial Reporting Act 2013

**Gordian** means Gordian RunOff Limited, a company incorporated in Australia and registered as an overseas company in New Zealand under the Companies Act 1993

**licensed insurer** has the same meaning as in section 6(1) of the Insurance (Prudential Supervision) Act 2010

**Regulations** means the Financial Markets Conduct Regulations 2014.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## 6 Exemptions

Gordian is exempt from—

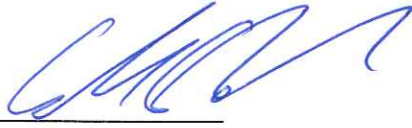
- (a) sections 455(1)(c), 461B, 461D and 461G of the Act; and
- (b) section 460 of the Act to the extent that it requires Gordian to ensure that its financial statements comply with generally accepted accounting practice.

## 7 Conditions

The exemptions in clause 6 are subject to the conditions that—

- (a) Gordian, in relation to the financial statements prepared under section 460 of the Act, must comply with the law and regulatory requirements of Australia that relate to the preparation, content, audit, and public filing of those statements and, in particular, Gordian must ensure that—
  - (i) those financial statements comply with Australian GAAP; and
  - (ii) those financial statements are audited by an approved auditor; and
  - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (b) Gordian must ensure that there are kept at all times accounting records that will enable Gordian to ensure that the financial statements prepared under section 460 of the Act comply with paragraph (a)(i); and
- (c) if an auditor's report referred to in paragraph (a)(iii) was qualified or referred to a fundamental matter in any respect, Gordian must, within 7 working days after the report is signed, provide a copy of the report, and a copy of the financial statements to which it relates, to —
  - (i) the Financial Markets Authority; and
  - (ii) the External Reporting Board; and
- (d) the financial statements that are delivered to the Registrar for lodgement under section 461H of the Act are accompanied by written notification to the Registrar that Gordian is relying on this notice; and
- (e) Gordian is not a New Zealand licensed insurer and is not otherwise a FMC reporting entity within the meaning of section 451 of the Act; and
- (f) Gordian remains non-resident for tax purposes in New Zealand; and
- (g) the Australian Securities and Investment Commission continues to be a full signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

Dated at Wellington this 6<sup>th</sup> day of April 2017.



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

### Statement of reasons

This notice, which comes into force on 14 April 2017 and is revoked on the close of 30 April 2018, applies to Gordian RunOff Limited (**Gordian**). Gordian was licensed as an insurer by the Reserve Bank of New Zealand (**Reserve Bank**) from 16 January 2012 until 22 February 2017.

This notice exempts Gordian from the following provisions of the Financial Markets Conduct Act 2013 (**the Act**)—

- section 455(1)(c) (which requires an FMC reporting entity to keep accounting records that will enable it to ensure that its financial statements comply with generally accepted accounting practice):
- section 460 to the extent that it requires the financial statements that are prepared to comply with New Zealand generally accepted accounting practice (**NZ GAAP**):
- section 461B (which relates to financial statements for the New Zealand business):
- sections 461D and 461G (which relate to auditing).

The exemptions are subject to a number of conditions. These include requirements that Gordian—

- prepares financial statements that comply with the laws and regulatory requirements in Australia:
- is not a New Zealand licensed insurer and is not otherwise a FMC reporting entity within the meaning of section 451 of the Act (notwithstanding that Gordian is treated as continuing to be a FMC reporting entity up until the end of the 31 December 2017 accounting period by section 454(1) of the Act):
- remains non-resident in New Zealand for tax purposes.

The main effects of the exemptions are as follows:

- rather than complying with NZ GAAP, the financial statements that are prepared will comply with Australian generally accepted accounting principles (**Australian GAAP**):
- those financial statements will be audited by an approved auditor who is qualified under the law of Australia to give an opinion as to whether the financial statements comply with Australian GAAP:
- separate financial statements for the New Zealand business will not be prepared:
- Gordian continues to be a FMC reporting entity with obligations under Part 7 of the Act as recognised by the conditions of the notice, as such the provisions of the Companies Act 1993 that apply to companies that are not FMC reporting entities do not apply.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- as a consequence of Gordian's New Zealand insurance licence being cancelled on 22 February 2017, it is no longer able to rely on the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016, which allows overseas licensed insurers to prepare, have audited and lodge financial statements that comply with generally accepted accounting practice in their home jurisdiction rather than NZ GAAP:
- the cost associated with Gordian having to prepare and audit financial statements in accordance with the requirements of Australia in addition to the costs associated with preparing NZ GAAP compliant financial statements audited by a New Zealand qualified auditor outweigh any benefit to a residual user, if any, of Gordian's financial statements:
- the FMA is satisfied that the financial reporting and audit requirements of Australia will provide sufficient and appropriate information to a residual user, if any, of Gordian's financial statements:
- the cost associated with Gordian having to prepare financial statements for its New Zealand business outweigh any benefit to a residual user, if any:
- Gordian is regulated in Australia by the Australian Securities and Investment Commission (**ASIC**) and supervised by the Australian Prudential Regulation Authority (**APRA**). ASIC is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. APRA and the Reserve Bank have entered into a Memorandum of Understanding Concerning Co-operation in Banking and Insurance Supervision. This means that the FMA and the Reserve Bank will be able to obtain co-operation from ASIC and APRA if any compliance concerns arise in relation to Gordian:
- as such, the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting flexibility in financial markets:
- the FMA is further satisfied that the extent of the exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions, given that it is unlikely that there are any remaining users of Gordian's financial information in New Zealand—
  - the FMA has consulted with the Reserve Bank, which cancelled Gordian's insurance licence, at the request of Gordian, on 22 February 2017. Gordian had been in orderly runoff in New Zealand after issuing its last policy in New Zealand in 1999; and
  - Gordian's appointed actuary's report concluded that Gordian does not have any New Zealand insurance liabilities remaining, at a 99.5% probability of sufficiency level; and
  - Gordian is non-resident for tax purposes in New Zealand.