

Financial Markets Conduct (Diligent Corporation) Exemption Notice 2016

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 (Diligent Corporation) Exemption Notice 2016.

2 Commencement

This notice comes into force on 18 March 2016.

3 Revocation

This notice is revoked on the close of 17 March 2021.

4 Application

An exemption granted by this notice applies to the following accounting periods of the exempt issuer:—

- (a) the accounting period that ends on 31 December 2015; and
- (b) subsequent accounting periods.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approved auditor, in relation to the exempt issuer, means an accountant who is qualified under the law of the United States of America to give an opinion as to whether specified financial statements comply with US GAAP

exempt issuer means Diligent Corporation a company incorporated in the State of Delaware in the United States of America

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

PCAOB means the Public Company Accounting Oversight Board

qualified auditor has the same meaning as in section 461E of the Act.

Regulations means the Financial Markets Conduct Regulations 2014

specified financial statements, in relation to the exempt issuer, means group financial statements of the exempt issuer for the accounting period ending on 31 December 2015 and all subsequent accounting periods, prepared in accordance with the laws of the United States of America

US auditing standards means all auditing standards approved by the PCAOB

US GAAP, in relation to the exempt issuer, means generally accepted accounting principles in the United States of America

US public company means a company that is required to comply with the reporting requirements under section 13 of the Securities Exchange Act of 1934 (United States).

- (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

The exempt issuer is exempted from—

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

7 Conditions

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

- (a) the specified financial statements must comply with the laws of the United States of America that relate to the preparation, content, audit, and public filing of those financial statements and, in particular—
 - (i) the specified financial statements must comply with US GAAP; and
 - (ii) the specified financial statements must be audited by an approved auditor in accordance with US auditing standards; and
 - (iii) an auditor's report in respect of the specified financial statements must be prepared by the approved auditor in accordance with US auditing standards; and
- (b) the exempt issuer must ensure that there are kept at all times accounting records that will enable the exempt issuer to ensure that—
 - (i) the specified financial statements comply with paragraph (a)(i); and
 - (ii) the financial statements under paragraph (c) comply with either generally accepted accounting practice or US GAAP; and

- (c) the exempt issuer must prepare financial statements for its group's New Zealand business, as if that business were conducted by companies formed and registered in New Zealand, that comply with generally accepted accounting practice or US GAAP; and
- (d) the financial statements of the group's New Zealand business must be audited by a qualified auditor or an approved auditor and an auditor's report must be prepared in respect of those financial statements; and
- (e) if the audit on the financial statements of the group's New Zealand business is carried out under paragraph (d) by—
 - (i) a qualified auditor, then in carrying out the audit and preparing the auditor's report on those financial statements the auditor must comply with all applicable auditing and assurance standards; or
 - (ii) an approved auditor, then in carrying out the audit and preparing the auditor's report on those financial statements the auditor must comply with US auditing standards; and
- (f) if the auditor's report indicates that the requirements of generally accepted accounting practice or US GAAP in respect of either the group's financial statements or the group's New Zealand business financial statements have not been complied with, the exempt issuer must, as soon as reasonably practicable, send a copy of the report, and a copy of the financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and
- (g) the specified financial statements must, when those statements are delivered for lodgement under section 461H of the Act, be accompanied by the financial statements for the group's New Zealand business together with a copy of the auditor's report on both those financial statements; and
- (h) the financial statements that are delivered to the Registrar for lodgement under paragraph (g) are accompanied by written notification to the Registrar that the exempt issuer is relying on this notice in respect of the accounting period to which the specified financial statements relate; and
- (i) the exempt issuer remains regulated as a US public company by the United States Securities and Exchange Commission; and
- (j) the United States Securities and Exchange Commission continues to be a full signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.

Dated at Auckland this

14th

day of

March

2016.



Nick Kynoch

General Counsel

Financial Markets Authority

Statement of reasons

This notice comes into force on 18 March 2016 and is revoked on the close of 17 March 2021. This notice applies to Diligent Corporation (**exempt issuer**).

This notice exempts the exempt issuer from the following provisions of the Financial Markets Conduct Act 2013 (the **Act**):

- section 455(1)(c) (FMC reporting entity must keep accounting records that will enable it to ensure that financial statements comply with generally accepted accounting practice);
- section 461 (group financial statements, to the extent that this section requires financial statements to be prepared in accordance with generally accepted accounting practice in New Zealand (**NZ GAAP**));
- section 461B (financial statements for the New Zealand business);
- section 461D and 461G (audit of financial statements).

The exemptions are subject to conditions that require the exempt issuer to prepare financial statements in accordance with the financial reporting requirements of the United States of America. The main effects of the exemptions are as follows:

- the specified financial statements will comply with generally accepted accounting principles in the United States of America (**US GAAP**) rather than NZ GAAP;
- the specified financial statements will be audited by an approved auditor who is qualified under the laws of the United States of America to give an opinion as to whether the specified financial statements comply with US GAAP;
- the group's New Zealand business financial statements will comply with generally accepted accounting practice or US GAAP, will be audited by a qualified auditor or an approved auditor and an auditor's report will be prepared in respect of those financial statements that complies with either all applicable auditing and assurance standards or US auditing standards.

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

- the United States' Securities and Exchange Commission (**SEC**) is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This means that the FMA will be able to obtain co-operation from the SEC if any compliance concerns arise in relation to the financial reporting requirements of the exempt issuer;
- the costs associated with the exempt issuer preparing and auditing financial statements in accordance with US GAAP in addition to preparing financial statements under New Zealand requirements would outweigh the benefits to users in receiving NZ GAAP rather than US GAAP financial statements;
- 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;
- given that financial statements are still required to be lodged in New Zealand, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.