

Financial Markets Conduct (Berkshire Hathaway Specialty Insurance Company) 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 Act (Berkshire Hathaway Specialty Insurance Company) Exemption Notice 2017.

2 Commencement

This notice comes into force on 28 April 2017.

3 Revocation

This notice is revoked on the close of 27 April 2022.

4 Application

(1) An exemption granted by this notice applies to the following accounting periods of BHSI:

- (a) the accounting period ending 31 December 2016; 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 means an accountant who is qualified and permitted under the law of the US

regulated jurisdiction to give an opinion as to whether group financial statements of BHSI comply with US GAAP

BHSI means the licensed insurer, Berkshire Hathaway Specialty Insurance Company, an overseas company incorporated in the US State of Nebraska

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

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

US means the United States of America

US GAAP means generally accepted accounting principles required or permitted in the US

US regulated jurisdiction in relation to BHSI, means the US State of Nebraska.

- (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 given to it by the Act or the Regulations.

6 Exemptions

BHSI is exempted from—

- (a) sections 455(1)(c), 461B(2), 461D, 461G and 461H of the Act; and
- (b) section 461 of the Act to the extent that it requires BHSI to ensure that its group financial statements—
 - (i) comply with generally accepted accounting practice; and
 - (ii) are completed within 4 months after BHSI's balance date;
 - (iii) are dated and signed in accordance with section 461(1)(b).

7 Conditions of exemptions

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

- (a) BHSI must ensure that, within 4 months after its balance date, unaudited group financial statements are completed in relation to the group at that balance date and BHSI must also ensure that—
 - (i) those statements are prepared in accordance with US GAAP; and
 - (ii) those statements include a prominent statement on the cover page to the effect that the group financial statements are unaudited and that the audited group financial statements will be lodged with the Registrar within 6 months and 14 days after BHSI's balance date; and
 - (iii) those statements are dated and signed by two directors of BHSI; and
 - (iv) within 4 months after BHSI's balance date, a copy of those statements is delivered to the Registrar for lodgement; and
- (b) the unaudited group financial statements delivered for lodgement under paragraph (a)(iv) above must be accompanied by financial statements for BHSI's New Zealand business

prepared as if that business were conducted by a company formed and registered in New Zealand, and BHSI must ensure that—

- (i) those statements are prepared in accordance with generally accepted accounting practice; and
 - (ii) those statements are audited by a qualified auditor; and
 - (iii) an audit report is prepared by the qualified auditor in respect of that audit and delivered to the Registrar for lodgement (together with BHSI's New Zealand business financial statements); and
- (c) BHSI, in relation to the group financial statements required to be prepared under section 461 of the Act, must comply with the law and regulatory requirements of the US regulated jurisdiction that relate to the preparation, content, audit, and public filing of those statements and, in particular, BHSI must ensure that—
- (i) those statements comply with US GAAP; and
 - (ii) those statements are audited by an approved auditor; and
 - (iii) an audit report is prepared by the approved auditor in respect of that audit; and
- (d) BHSI must ensure that, within 6 months and 14 days after its balance date, copies of the group financial statements required to be prepared under section 461 of the Act and referred to in paragraph (c), together with a copy of the auditor's report on those statements that is required to be prepared under paragraph (c)(iii), are delivered to the Registrar for lodgement; and
- (e) BHSI must ensure that there are kept at all times accounting records that will enable BHSI to ensure that—
- (i) the group financial statements required to be prepared under section 461 of the Act comply with paragraph (c)(i) above; and
 - (ii) the New Zealand business financial statements prepared under paragraph (b) above comply with generally accepted accounting practice; and
- (f) the financial statements and audit reports that are delivered to the Registrar for lodgement under paragraphs (a), (b) and (d) above must be accompanied by written notification to the Registrar that BHSI is relying on this notice in respect of the accounting period to which the statements and the audit reports relate; and
- (g) if an auditor's report referred to in paragraph (b)(iii) or (c)(iii) above indicates that the requirements of generally accepted accounting practice (in respect of the financial statements for the New Zealand business under paragraph (b)) or the requirements of US GAAP (in respect of the group financial statements under paragraph (c)) have not been complied with, BSHI must, within 7 working days after the report is signed by the relevant auditor, provide 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
 - (iii) the Reserve Bank; and
- (h) BHSI remains a licensed insurer and remains regulated as an insurer in the US regulated jurisdiction; and

- (i) the Securities and Exchange Commission (**SEC**) must continue to be a 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 27th day of April 2017.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of Reasons

This notice, which comes into force on 28 April 2017 and is revoked on 27 April 2022, applies to Berkshire Hathaway Specialty Insurance Company (**BHSI**), an insurer licensed by the Reserve Bank of New Zealand (the **Reserve Bank**).

This notice exempts BHSI from certain financial reporting obligations in subpart 3 of Part 7 of the Financial Markets Conduct Act 2013 (**Act**), including—

- 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 New Zealand generally accepted accounting practice (**NZ GAAP**));
- section 461 of the Act, to the extent that that section requires BHSI to ensure that its group financial statements comply with NZ GAAP, are completed within 4 months after BHSI's balance date (the **NZ timeframe**) and are dated and signed in accordance with section 461(1)(b);
- section 461B(2) (which relates to financial statements for the New Zealand business); and
- sections 461D and 461G (which relate to auditing);
- section 461H (which relates to the timing of delivery of the financial statements and the auditor's report to the Registrar for lodgement).

These exemptions are subject to conditions that require BHSI to prepare group financial statements that comply with the legislation of the jurisdiction in which BHSI is incorporated, namely the US State of Nebraska (the **US regulated jurisdiction**).

The main effects of the exemptions for BHSI are as follows:

- the group financial statements that are prepared will comply with generally accepted accounting principles required or permitted in the US (**US GAAP**) rather than NZ GAAP;
- those group financial statements will be audited by an auditor who is qualified and permitted under the laws of the US State of Nebraska to give an opinion as to whether group financial statements of BHSI comply with US GAAP (an **approved auditor**), rather than a qualified auditor (as that term is defined in the Act);
- those audited group financial statements will be lodged with the Registrar within 6 months and 14 days after BHSI's balance date (the **US timeframe**), together with the audit report in respect of those statements:

- BHSI will still be required to prepare financial statements for BHSI's New Zealand business in accordance with NZ GAAP and which are audited by a qualified auditor (as that term is defined in the Act):
- the New Zealand business financial statements will be lodged with the Registrar in accordance with the NZ timeframe, together with the auditor's report in respect of those statements and with an unaudited copy of BHSI's group financial statements that have been prepared in accordance with US GAAP.

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—

- the Reserve Bank is required to assess the financial reporting and audit requirements of the home jurisdiction of any overseas insurer seeking registration or licensing in New Zealand. In these circumstances, the FMA is satisfied that the financial reporting and audit requirements and the nature and extent of regulatory oversight in BHSI's home jurisdiction, together with the provision of the financial statements required by the conditions of the above notice to the Registrar, will provide sufficient and appropriate information to the Reserve Bank for it to undertake its prudential regulation of BHSI, and to investors for them to make investment decisions. Investors in BHSI will have access to broadly similar, and equivalent, information to the information that they would otherwise have access to:
- BHSI is regulated in the United States which, through the Securities and Exchange Commission (**SEC**), is a signatory to an international memorandum of understanding for co-operation and information sharing. This means that the FMA and the Reserve Bank will be able to obtain co-operation from the SEC if any compliance concerns arise in relation to BHSI:
- BHSI is unable to obtain the benefit of the exemptions contained in the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2016 (the **licensed insurers exemptions**), as BHSI is seeking relief from the NZ timeframe relating to lodgement of its audited group financial statements. However, aside from the exemptions relating to the NZ timeframe, the exemptions sought by BHSI are consistent with the licensed insurers exemptions:
- BHSI is domiciled in a jurisdiction that requires it to prepare, audit, and to lodge its financial statements within 6 months and 14 days after BHSI's balance date. BHSI and the wider group operate in a number of other overseas jurisdictions. Requiring BHSI to lodge audited group financial statements in accordance with the NZ timeframe would require a structural upheaval of the audit process for BHSI's group and for its US-based parent company, and would significantly increase compliance costs for BHSI and for the wider group. Accordingly, the costs associated with BHSI having to prepare and audit financial statements in accordance with the requirements of the US regulated jurisdiction, in addition to the costs associated with preparing NZ GAAP compliant group financial statements audited by a New Zealand qualified auditor and lodging those statements within the NZ timeframe, would outweigh the benefits to the Reserve Bank and to investors of receiving audited NZ GAAP compliant group financial statements within the New Zealand timeframe:
- 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 exemptions only address the particular difficulties experienced by BHSI. Given the limited application of the exemptions, and that investors will still have access to (within the NZ timeframe) New Zealand business financial statements that meet New Zealand financial reporting and audit requirements, and to unaudited group financial statements; as well as

(within the US timeframe) access to group financial statements that meet financial reporting and audit requirements in a reputable jurisdiction, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that give rise to them.