

Financial Markets Conduct (Genworth Financial Mortgage Insurance Pty Limited) 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 (Genworth Financial Mortgage Insurance Pty Limited) Exemption Notice 2016.

2 Commencement

This notice comes into force on 29 April 2016.

3 Revocation

This notice is revoked on the close of 28 April 2021.

4 Application

- (1) An exemption granted by this notice applies to the following accounting periods of Genworth:
 - (a) the accounting period ending 31 December 2015; and
 - (b) subsequent accounting periods.
- (2) However, an exemption granted by this notice does not apply in respect of an accounting period if Genworth is an FMC reporting entity in that accounting period because it is an issuer of a regulated product within the meaning of section 451(a) of the Act.

5 Interpretation

- (1) In this notice unless the context otherwise requires—
Act means the Financial Markets Conduct Act 2013

applicable auditing and assurance standard has the same meaning as in section 5(1) of the Financial Reporting 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

Genworth means the licensed insurer Genworth Financial Mortgage Insurance Pty Limited, a company incorporated in Australia and registered as an overseas company in New Zealand under the Companies Act 1993

Genworth Indemnity means Genworth Financial Mortgage Indemnity Limited, a company registered in Australia and a wholly owned subsidiary of Genworth

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

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

6 Exemptions

Genworth is exempted from:—

- (a) subpart 3 of Part 7 of the Act to the extent that group financial statements that comply with NZ GAAP are required to be prepared; and
- (b) sections 455(1)(c), 461B, 461D, and 461G of the Act.

7 Conditions

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

- (a) Genworth, in relation to its financial statements required to be prepared under subpart 3 of Part 7 of the Act, must complete financial statements that comply with the law and regulatory requirements of Australia that relate to the preparation, content, and audit of those statements and, in particular, Genworth 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) Genworth must ensure that there are kept at all times accounting records that will enable it to ensure that—
 - (i) the financial statements comply with paragraph (a)(i); and
 - (ii) the New Zealand business financial statements under paragraph (c) comply with generally accepted accounting practice in New Zealand; and
- (c) financial statements for Genworth's New Zealand business (if any) must be prepared as if that business were conducted by a company formed and registered in New Zealand, that comply with generally accepted accounting practice; and
- (d) the financial statements of Genworth's New Zealand business must be audited by a qualified auditor or an approved auditor; and

- (e) the qualified auditor or approved auditor, in carrying out the audit on Genworth's New Zealand business financial statements under paragraph (d), and the auditor's report on those financial statements, must comply with all applicable auditing and assurance standards; and
- (f) if the auditor's report from the qualified auditor or approved auditor indicates that the requirements of generally accepted accounting practice in respect of Genworth's New Zealand business financial statements under paragraph (d), or Australian GAAP in respect of its financial statements under paragraph (a), have not been complied with, Genworth 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 financial statements of Genworth are delivered to the Registrar for lodgement under section 461H of the Act and accompanied by —
 - (i) Genworth's New Zealand business financial statements together with a copy of the auditor's report on those financial statements; and
 - (ii) the financial statements of Genworth Indemnity together with a copy of the auditor's report on those financial statements prepared and audited by an approved auditor in accordance with the law and regulatory requirements of Australia that relate to the preparation, content, and audit of those statements; and
 - (iii) written notification to the Registrar that Genworth is relying on this notice in respect of the accounting period to which the statements relate; and
- (h) Genworth is not required by Australian law or Australian GAAP to prepare group financial statements and continues to satisfy any relevant conditions; and
- (i) the Australian Securities and Investment Commission continues to be a full signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information; and
- (j) the Memorandum of Understanding Concerning Co-operation in Banking and Insurance Supervision remains in place between the Reserve Bank of New Zealand and the Australian Prudential Regulation Authority.

Dated at Auckland this

19th

day of

April

2016.



Nick Kynoch

General Counsel

Financial Markets Authority



Statement of reasons

This notice, which comes into force on 29 April 2016 and is revoked on 28 April 2021, applies to Genworth Financial Mortgage Insurance Pty Limited (**Genworth**) an insurer licensed by the Reserve Bank of New Zealand (the **Reserve Bank**).

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

- subpart 3 of Part 7 of the Act to the extent that the subpart requires an FMC reporting entity that has 1 or more subsidiaries to prepare:
 - group financial statements; and
 - to comply with New Zealand generally accepted accounting practice (**NZ GAAP**):
- section 455(1)(c) which requires accounting records to be kept that enable an FMC reporting entity to ensure that its financial statements comply with NZ GAAP:
- section 461B which relates to financial statements for the New Zealand business:
- sections 461D and 461G which require financial statements to be audited by a qualified auditor and an auditor's report in respect of those financial statements.

The exemptions are subject to a number of conditions including that Genworth prepares financial statements that comply with the financial reporting requirements of Australia and that Genworth also lodges the financial statements of its sole subsidiary Genworth Financial Mortgage Indemnity Limited that comply with the financial reporting requirements of Australia.

The main effects of the exemptions are as follows:

- Genworth is a licensed insurer, and so an FMC reporting entity. For this reason its financial statement preparation, audit and lodgement obligations are appropriately regulated by subpart 3 of Part 7 of the Act. This notice grants Genworth an exemption from the usual requirement in this subpart to prepare group financial statements. Instead, Genworth is required to prepare financial statements for the entity. In appropriate recognition of Genworth's status as an FMC reporting entity, the conditions of the notice recognise that these alternative financial statements continue to be required under subpart 3 of Part 7 of the Act, such that the provisions of the Companies Act 1993 that apply to companies that are not FMC reporting entities do not apply:
- the financial statements that are prepared will comply with generally accepted accounting practice in Australia (**Australian GAAP**) and will be completed in relation to Genworth as an entity rather than Genworth's group:
- Genworth's financial statements will be audited by an approved auditor who is qualified under the laws of Australia to give an opinion as to whether the financial statements comply with Australian GAAP:
- Genworth's financial statements will be accompanied by:—
 - Genworth's New Zealand business financial statements that comply with NZ GAAP and that are audited by an approved auditor from Australia or a qualified auditor in New Zealand in accordance with applicable New Zealand auditing and assurance standards:
 - Genworth Financial Mortgage Indemnity Limited's financial statements that comply with Australian GAAP and that are audited by an approved auditor who is qualified under the laws of Australia to give an opinion as to whether the financial statements comply with Australian GAAP.

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 exemption because—

- the Financial Markets Conduct (Overseas Registered Banks and Licensed Insurers) Exemption Notice 2015 (**class notice**) allows overseas registered banks and licensed insurers to prepare, have audited and lodge financial statements that comply with generally accepted accounting practice in their home jurisdictions rather than NZ GAAP. The class notice requires overseas registered banks and licensed insurers with one or more subsidiaries to prepare, audit and lodge group financial statements that comply with generally accepted accounting practice in their home jurisdictions. Genworth cannot readily rely on the class notice because, under Australian GAAP, and Australian law and regulatory requirements, it is not required to produce group financial statements:
- the Reserve Bank assesses the financial reporting and audit requirements of the overseas jurisdiction of any overseas insurer seeking a licence in New Zealand. In this case the overseas jurisdiction of Genworth is Australia. The FMA is satisfied the financial reporting and audit requirements of Australia will provide sufficient and appropriate information to the Reserve Bank for it to undertake prudential regulation of Genworth. The FMA is also satisfied that Genworth's policy holders will have access to information equivalent to the information they would otherwise have access to:
- Genworth is regulated in Australia by the Australian Securities and Investments Commission (**ASIC**) and supervised by the Australian Prudential Regulation Authority (**APRA**). ASIC is a signatory to the International Organization of Securities Commission's 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 Genworth:
- the additional cost of preparing and auditing group financial statements under New Zealand requirements in addition to costs associated with preparing and auditing financial statements in accordance with Australian requirements would outweigh the benefits to policy holders of having access to financial statements prepared in accordance with NZ GAAP rather than Australian GAAP. As such the granting of the exemptions is desirable in order to promote the purposes of the Act, by avoiding unnecessary compliance costs:
- 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—
 - the exemptions only address particular issues experienced by Genworth, that arise because it is not required to prepare group financial statements under Australian law and regulatory requirements, which means that it cannot readily rely on the class notice; and
 - the exemptions and conditions, consistent with the policy of the class notice, mean policy holders will have access to financial statements lodged in New Zealand that provide information equivalent to what they would have been entitled to under the FMC Act and meet financial reporting requirements and auditing and assurance standards in Australia; and
 - the exemptions will not apply if Genworth becomes an FMC reporting entity because it is an issuer of a regulated product within the meaning of section 451(a) of the Act in addition to being an FMC reporting entity due to the fact it is a licensed insurer.