

## Financial Markets Conduct (Clearwater Golf Club Limited) Exemption Notice 2019

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 (Clearwater Golf Club Limited) Exemption Notice 2019.
- 2 Commencement**

This notice comes into force on 27 May 2019.
- 3 Revocation**

This notice is revoked on the close of 26 May 2024.
- 4 Application**

The exemption granted by this notice applies to the following accounting periods of the company:

  - (a) the accounting period ending 31 March 2019; and
  - (b) subsequent accounting periods.
- 5 Interpretation**
  - (1) In this notice, unless the context otherwise requires—

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

**company** means Clearwater Golf Club Limited

**Companies Act** means the Companies Act 1993

**member shareholder** means a holder of 1 or more membership shares



**membership share** means a non-voting redeemable preference share issued by the company in accordance with its constitution for the principal purpose of providing member shareholders with golf playing rights and access to related facilities at the Clearwater Golf Club

**shareholder** means a holder of 1 or more shares in the company, whether voting or non-voting, and includes a member shareholder

**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 given to it by the Act or the Regulations.

## 6 Exemption

The company is exempted from Part 7 of the Act with respect to a particular accounting period if the company would be an FMC reporting entity only by virtue of membership shares being regulated products.

## 7 Conditions of exemption

- (1) The exemption in clause 6 is subject to the conditions that –
- (a) the company must ensure that, within 5 months after its balance date, financial statements (or, if the company has 1 or more subsidiaries on its balance date, group financial statements) that comply with generally accepted accounting practice are –
    - (i) completed in relation to the company (or, if applicable, the group) and that balance date; and
    - (ii) dated and signed on behalf of the company by 2 of its directors, or if the company has only 1 director, by that director; and
  - (b) the company must ensure that –
    - (i) the financial statements prepared in respect of it (or, if applicable, the group) under paragraph (a) are audited by a qualified auditor; and
    - (ii) the qualified auditor makes a report to the shareholders on those financial statements; and
  - (c) when engaging a qualified auditor to carry out the audit under paragraph (b), the company must, as a term of that engagement, require the audit report, and the qualified auditor, to comply with all applicable auditing and assurance standards; and
  - (d) if the auditor's report from the qualified auditor indicates that the requirements of generally accepted accounting practice in respect of the financial statements prepared under paragraph (a) have not been complied with, the company must, within 7 working days of receiving the report from the qualified auditor, send a copy of the report and a copy of the financial statements to which it relates to the FMA and the External Reporting Board; and
  - (e) the board of the company must, within 5 months after the balance date of the company, prepare an annual report on the affairs of the company during the accounting period ending on that date which, subject to clause 9, complies with the content requirements for annual reports set out in section 211 of the Companies Act, and ensure that that annual report is made available to all shareholders within 20 working days after the date on which the annual report is prepared; and

- (f) the company must ensure that a statement in the following form is included, in a prominent position, at the front of every document provided to any shareholder that contains the company's (or the group's) financial statements for that accounting period:

"You hold shares in Clearwater Golf Club Limited (Clearwater). The usual financial reporting and audit requirements under the Financial Markets Conduct Act 2013 do not apply to Clearwater for [relevant accounting period] because there is an individual exemption in place for Clearwater.

As a result, Clearwater is subject to alternative financial reporting and audit requirements, which are similar to those in the Companies Act 1993.

If you would like any further information, please contact [contact details]."

- (2) Sub-clauses (1)(b) to (d) are subject to clause 8.

### 8 Ability to opt out of audit conditions

Clauses 7(1)(b) to (d) will not apply in respect of a particular accounting period if, prior to the date that is 6 months after the start of that accounting period, not less than 95% of member shareholders voting on the matter at a meeting of member shareholders held in accordance with the company's constitution agree to opt out of compliance with those clauses.

### 9 Ability to opt out of certain annual report content requirements

The annual report of the company required under clause 7(1)(e) need not comply with any of sections 211(1)(a), (e) to (j), and section 211(2), of the Companies Act if not less than 95% of member shareholders voting on the matter at a meeting of member shareholders held in accordance with the company's constitution agree that the report need not do so.

Dated at Auckland this 22<sup>nd</sup> day of May 2019.



Liam Mason  
Director of Regulation  
Financial Markets Authority

## Statement of Reasons

This notice comes into force on 27 May 2019 and is revoked on the close of 26 May 2024.

This notice exempts Clearwater Golf Club Limited (**company**), a company whose principal purpose is to provide its member shareholders with golf playing rights and access to related facilities at Clearwater Golf Club, from the financial reporting and auditing requirements under Part 7 of the Financial Markets Conduct Act 2013 (the **Act**).

The exemption applies only if the company would be an FMC reporting entity only by virtue of the non-voting redeemable preference shares issued by it for the principal purpose of providing shareholders with golf playing rights and access to related facilities (**membership shares**) being regulated products. The exemption is also subject to a number of conditions, including that the company prepare financial statements that comply with generally accepted accounting practice for each accounting period and, unless 95% of member shareholders opt out, have those financial statements audited. The conditions effectively replicate the financial reporting regime under the Companies Act 1993 (**Companies Act**), which would not necessarily otherwise apply to the company, due to its particular capital structure.

The company must also disclose this exemption and its consequences for shareholders in its financial statements.

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 this exemption because—

- there is no expectation of financial return from ownership of the membership shares. The company's principal purpose in issuing the membership shares is to provide member shareholders with golf playing rights and access to related facilities at Clearwater Golf Club, which are not in the nature of typical equity returns and are irrespective of any profits made by the company. Accordingly, it would impose an unnecessary compliance burden to require the company to comply with Part 7 of the Act, solely as a result of the company issuing the membership shares:
- through the conditions, the substance of the financial reporting and disclosure requirements of the Companies Act will apply. This will ensure that shareholders will still receive relevant information, notwithstanding that the company will not need to comply with Part 7 of the Act, and may not otherwise be required to prepare financial statements, or an annual report, under the Companies Act:
- for these reasons, the FMA is satisfied that the exemption is necessary or desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs while continuing to ensure the provision of timely, accurate and understandable financial information to assist decision making by shareholders:
- the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to it, as:
  - the exemption is limited to circumstances where the company would be an FMC reporting entity only by virtue of its membership shares being regulated products:
  - the conditions reinstate a financial reporting and disclosure regime substantively similar to that in the Companies Act, which ensures that shareholders still receive relevant financial information, and are notified of the consequences of this exemption.