

Financial Reporting Act (Diligent Board Member Services, Inc.) Exemption Notice 2014

Pursuant to section 35A of the Financial Reporting Act 1993, the Financial Markets Authority, being satisfied of the matters set out in Section 35A(2) of that Act, gives the following notice.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Application	1
5 Interpretation	1
6 Exemptions	2
7 Conditions	3

Notice

- Title**
This notice is the Financial Reporting Act (Diligent Board Member Services, Inc.) Exemption Notice 2014.
- Commencement**
This notice comes into force on 18 April 2014.
- Revocation**
This notice is revoked on the close of 31 July 2015.
- Application**
An exemption granted by this notice applies to the following accounting periods of Diligent:
 - the accounting period ending 31 December 2013; and
 - subsequent accounting periods.
- Interpretation**
 - In this notice, unless the context otherwise requires,-
Act means the Financial Reporting Act 1993

approved auditor 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, and who is a partner, member or employee of a registered public accounting firm

Diligent means Diligent Board Member Services, Inc., a company incorporated in the State of Delaware in the United States of America

registered public accounting firm means an accounting firm that is registered with the Public Company Accounting Oversight Board in accordance with the Sarbanes Oxley Act of 2002 (United States)

specified financial statements means the consolidated group financial statements that are required to be prepared annually in respect of Diligent and its group following the end of its financial year in accordance with the laws of the United States of America (including the applicable US legislation)

specified US legislation means the Securities Exchange Act of 1934 (United States) and Title 17, Part 210 of the US Code of Federal Regulations (or legislation that, with or without modification, replaces or corresponds to that legislation)

US audit standards means the rules, regulations and standards applicable to the audit of financial statements of reporting companies under the Securities Exchange Act of 1934 (US) and promulgated by the Public Company Accounting Oversight Board (US), and related professional standards applicable to registered public accounting firms.

US GAAP 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) For the purposes of this notice, **carries on business in New Zealand** has the same meaning as in section 332 of the Companies Act 1993, except that Diligent is not taken to carry on business in New Zealand merely because it has established or used a share transfer office or share registration office in New Zealand.
- (3) 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 for directors of Diligent

Every director of Diligent is exempted from sections 10(1), 11, 13 to 16, and 18(1) of the Act in respect of Diligent.

7 Conditions

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

Group financial statements

- (a) Diligent is a US public company; and
- (b) Diligent, in relation to its specified financial statements, complies with the laws of the State of Delaware and the United States of America that relate to the preparation, content, audit and public filing of those statements (including the specified US legislation); and
- (c) the specified financial statements of Diligent comply with US GAAP; and
- (d) if, in complying with US GAAP, the specified financial statements do not give a true and fair view of the matters to which they relate, they are accompanied, when delivered to the Registrar for registration, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (e) the specified financial statements of Diligent are delivered to the Registrar for registration annually, and no later than the date on which the financial statements of Diligent would, but for the exemptions in clause 6, be required to be delivered for registration; and
- (f) the specified financial statements of Diligent are, when delivered to the Registrar for registration, accompanied by a report by an approved auditor, issued either in the approved auditor's own name or in the name of the registered public accounting firm of which the approved auditor is a partner, member, or employee, that complies with the requirements specified in US Audit Standards; and

Branch financial statements

- (g) If Diligent carries on business in New Zealand, Diligent complies with either subparagraphs (i) to (v) or with subparagraph (vi) as follows:

Option 1: branch financial statements in accordance with overseas law

- (i) Diligent prepares annual financial statements that comply with the laws of the State of Delaware and the United States of America (including the specified US legislation) that relate to the preparation, content, and audit of financial statements in respect of either or both of its New Zealand business and the group's New Zealand business, as applicable, as if that New Zealand business were conducted by a separate company or group, of which the parent company is incorporated in the State of Delaware in the United

States of America and is a US public company (**branch financial statements**); and

- (i) the branch financial statements comply with US GAAP; and
- (iii) if, in complying with US GAAP, the branch financial statements do not give a true and fair view of the matters to which they relate, they are accompanied, when delivered to the Registrar for registration, by a statement in English containing information and explanations that will give a true and fair view of those matters; and
- (iv) the branch financial statements are delivered to the Registrar for registration annually, and not later than the date on which the financial statements would, but for the exemptions in this notice, be required to be delivered for registration; and
- (v) the branch financial statements are accompanied, when delivered to the Registrar for registration, by a report by an approved auditor, issued either in the approved auditor's own name or in the name of the registered public accounting firm of which the approved auditor is a partner, member, or employee, that complies with US Audit Standards; or

Option 2: branch financial statements in accordance with New Zealand law

- (vi) Diligent prepares financial statements and, if applicable, group financial statements in respect of its or its group's New Zealand business as if that business were conducted by a separate company or group incorporated in New Zealand, and Diligent complies with the provisions of the Act that relate to preparation, content, audit and registration of those statements.

Dated at Wellington this 10th day of April 2014.



Simone Robbers
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 18 April 2014 and is revoked on 30 November 2016.

This notice exempts directors of Diligent Board Member Services, Inc. (**Diligent**) from the following provisions of the Financial Reporting Act 1993 (the **Act**):

- section 10(1) (obligation to prepare financial statements):
- section 11 (content of financial statements):
- sections 13 to 16 (obligations in respect of group financial statements and audit):
- section 18(1) (registration of financial statements).

The exemptions are subject to conditions that require Diligent to provide consolidated financial statements that comply with the laws and financial reporting standards of the United States of America. The principal differences in financial statements provided by Diligent are that:

- (a) the financial statements will be prepared in accordance with and comply with generally accepted accounting principles of the United States of America (**US GAAP**) rather than generally accepted accounting practice in New Zealand (**NZ GAAP**):
- (b) the financial statements prepared and registered by Diligent will not include separate financial statements for Diligent itself – it will only contain consolidated financial statements for Diligent and its group:
- (c) the financial statements will be audited by an accountant who is qualified under United States law to give an opinion as to whether the financial statements comply with US GAAP and the auditor's report will contain the information required by United States law instead of that required by the Financial Reporting Act 1993.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 35A(2) of the Act, considers that it is appropriate to grant the exemptions because—

- there will not be any significant detriment to subscribers as the exemptions are available only to Diligent who is regulated as a public company by the United States Securities and Exchange Commission (**SEC**). FMA is satisfied that the financial reporting requirements, and the nature and extent of the regulatory oversight of Diligent by the SEC, are equivalent to those that exist for New Zealand issuers. As such, investors in securities issued by Diligent will have access to broadly similar, and equivalent, financial reporting information to that which they would otherwise receive:

- the conditions of exemption require Diligent to prepare its financial statements and have them audited on the same basis as Diligent has previously prepared its financial statements. Consequently, there will be no change from what Diligent shareholders have received for a number of years:
 - the costs associated with Diligent preparing NZ GAAP compliant financial statements and having those audited by a New Zealand licensed auditor or registered audit firm would outweigh the benefits to investors of having available NZ GAAP financial statements, rather than financial statements prepared in accordance with United States law and US GAAP:
 - the exemptions only address the particular difficulties experienced by Diligent as an issuer that is incorporated in the United States. Given the limited application of the exemptions and that financial statements are still required to be registered in New Zealand, the exemptions are not broader than is reasonably necessary to address the matters to which they relate.
-