

## Securities Act (Diligent Board Member Services, Inc.) Exemption Notice 2014

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority, being satisfied of the matters set out in section 70B(2) of that Act, gives the following notice.

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### Notice

- Title**  
This notice is the Securities 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 30 November 2016.
- Interpretation**  
(1) In this notice, unless the context otherwise requires,—  
**Act** means the Securities Act 1978  
**approved auditor** means an accountant who is qualified under the laws 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)

**Regulations** means the Securities Regulations 2009

**specified financial statements** means the specified financial statements, as defined in the Financial Reporting Act (Diligent Board Member Services, Inc.) Exemption Notice 2014, of Diligent that comply with the conditions in clause 7 of that Notice

**US GAAP** means generally accepted accounting principles in the United States of America

- (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.

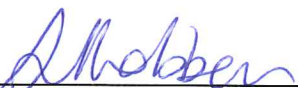
**5 Exemption from section 53E**

Diligent and every person acting on its behalf is exempted from section 53E of the Act.

**6 Condition of exemption in Clause 5**

The exemption in clause 5 is subject to the condition that the specified financial statements are audited at least once a year by an approved auditor.

Dated at Wellington this 10<sup>th</sup> day of April 2014.

  
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Simone Robbers  
Head of Primary Regulatory Operations  
Financial Markets Authority

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**Statement of reasons**

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

This notice exempts Diligent Board Member Services, Inc. (**Diligent**) from section 53E of the Securities Act 1978 (the **Act**). Section 53E requires the financial statements of issuers to be audited by a qualified auditor at least once a year. The notice instead requires Diligent to have an audit at least once in each year by an auditor who is qualified under the laws of United States.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant the exemption because—

- Diligent will have been exempted from the requirements of the Financial Reporting Act 1993 (**FRA**) to prepare, have audited and register financial statements, subject to conditions that require it to prepare financial statements in accordance with United States law and generally accepted accounting principles in the United States, have those financial statements audited by a person qualified to act as an auditor in the United States and register those audited financial statements in New Zealand. In addition to the audit requirements of the FRA, section 53E of the Act imposes a further requirement for an annual audit. If Diligent were not granted an exemption from section 53E, it would be required to have an audit by a New Zealand licensed auditor or registered audit firm each year even though it had been exempted from the requirement in the FRA to do so:
- FMA has had regard to the financial reporting and audit requirements, and the auditor oversight regime under the law of the United States where Diligent is incorporated. Diligent is regulated by, and subject to the oversight of, the United States Securities and Exchange Commission. FMA is satisfied that the financial reporting requirements and the nature and extent of the regulatory oversight are equivalent to those that exist for New Zealand issuers. In these circumstances, FMA considers that there will be no significant detriment to investors who are members of the public in New Zealand as a result of Diligent being audited by an auditor meeting the requirements of its home jurisdiction instead of a New Zealand licensed auditor or registered audit firm:
- the costs associated with a requirement that Diligent have its financial statements audited by a New Zealand licensed auditor or registered audit firm would outweigh the benefits to investors of having available financial statements audited by a New Zealand licensed auditor or registered audit firm, rather than the financial statements being audited by an auditor who is qualified under US law:
- the exemption addresses particular difficulties experienced by Diligent, who will have been exempted from the requirements of the FRA to have its financial statements audited by a licensed auditor or registered audit firm. Accordingly, FMA is satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.