



Securities Act (Frucor Beverages Group Limited) Exemption Notice 2000

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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Notice

1 Title

This notice is the Securities Act (Frucor Beverages Group Limited) Exemption Notice 2000.

2 Commencement

This notice comes into force on its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 December 2000.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

company means Frucor Beverages Group Limited

employee share savings plan means a plan established by the company or by any of its subsidiaries under which employees of the company or of any of its subsidiaries may acquire securities or rights or options to acquire securities issued by the company

First Schedule means the First Schedule of the Regulations

offeror means the persons named in Schedule 1

Regulations means the Securities Regulations 1983

specified equity securities means ordinary shares in the capital of the company.

- (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 sections 33(1) and 37A of Act

The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from sections 33(1) and 37A of the Act in respect of any offer or allotment of specified equity securities made to persons outside New Zealand.

6 Exemption from regulations 3(1) and 7A(1) of Regulations

- (1) The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from regulations 3(1) and 7A(1) of the Regulations in so far as those provisions require a registered prospectus or investment statement relating to specified equity securities to contain information about the offeror as the issuer of the specified equity securities.
- (2) The exemption is subject to the condition that all money or other consideration provided by or on behalf of any person for the purchase of specified equity securities from any of the offerors is held by the company on trust for that person until those securities are transferred to or in accordance with the directions of that person.

7 Exemption from regulation 7(1)(a) of Regulations

- (1) The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from compliance with regulation 7(1)(a) of the Regulations in so far as that paragraph requires a prospectus containing an offer of specified equity securities to have endorsed on it, or attached to it, or be accompanied by, copies of the agreements referred to in column 1 of Schedule 2.
- (2) The exemption is subject to the conditions that—
 - (a) the registered prospectus has endorsed on it, or attached to it, or is accompanied by, copies of the agreements excluding the provisions referred to in the second column of Schedule 2; and
 - (b) the registered prospectus contains a description of the provisions of clause 2 of the first contract listed in the first column of Schedule 2 relating to the term of the contract and termination of the contract by either party to it; and
 - (c) any information relating to any of the provisions referred to in the second column of Schedule 2 that is publically disclosed in any country outside New Zealand in which offers of the specified equity securities are made is also contained in the registered prospectus.

8 Exemption from clause 1(4) of First Schedule

- (1) The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from clause 1(4) of the First Schedule in respect of any offer of specified equity securities.
- (2) The exemption is subject to the condition that the registered prospectus that contains the offer of the specified equity securities—
 - (a) describes the procedure for fixing the purchase price for the specified equity securities; and
 - (b) describes the factors that may be taken into account in determining the purchase price for the specified equity securities; and
 - (c) states when the purchase price for the specified equity securities is expected to be fixed; and

- (d) states how an investor may ascertain the purchase price for the specified equity securities; and
- (e) describes the procedures for holding money paid to subscribe for the specified equity securities by or on behalf of the offeror; and
- (f) describes the method of allocation for the transfer of the specified equity securities to applicants; and
- (g) states the price range within which the directors of the company expect the final price for the specified equity securities will be set; and includes a warning that the final price may be outside the stated range; and
- (h) describes the procedure for determining the allocation of the specified equity securities to institutional investors and other applicants; and
- (i) describes how over subscriptions will be treated and the procedure for making refunds; and
- (j) states, in terms permitted by regulation 23 of the Regulations, that an application has been made to the New Zealand Stock Exchange for permission to list the specified equity securities.

9 Exemption from clause 10(1)(c) of First Schedule

- (1) The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from compliance with clause 10(1)(c) of the First Schedule in respect of any offer of specified equity securities.
- (2) The exemption is subject to the conditions that—
 - (a) the registered prospectus contains a prospective statement of cash flows for the company and its subsidiaries in respect of each of the following periods:
 - (i) the period of 12 months commencing on 1 July 1999 and ending on the close of 30 June 2000; and
 - (ii) the period of 12 months commencing on 1 July 2000 and ending on the close of 30 June 2001;
 - (b) the prospective statements of cash flows comply with clause 10(2)(b) of the First Schedule.

10 Exemption from clauses 13(a)(ii) and (iii) and 13(b) of First Schedule

- (1) The Company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from clauses 13(a)(ii) and (iii) and 13(b) of the First Schedule to the extent that those clauses require information about any securities issued, or proposed to be issued, under the employee share savings plan to be referred to in a prospectus relating to an offer of specified equity securities.
- (2) The exemption is subject to the condition that any securities under the employee share savings plan are issued before 31 December 2000 and the prospectus contains—
 - (a) a description of the terms on which securities are issued under the employee share savings plan, including the procedure for setting the subscription price for the securities; and
 - (b) a statement of the likely maximum number of securities to be issued, or proposed to be issued, under the employee share savings plan; and
 - (c) a statement of the likely proportions in which securities will be allotted to principal officers and employees of the company, respectively.

11 Exemption from clause 39(b) of First Schedule

- (1) The company, the offeror, every promoter, and every person acting on behalf of any of them, are exempted from clause 39(b) of the First Schedule in respect of any specified equity securities in so far as that paragraph applies to the agreements referred to in column 1 of Schedule 2.
 - (2) The exemption is subject to the condition that the prospectus containing the offer of specified equity securities states the times and places where copies of the agreements, excluding the provisions referred to column 2 of Schedule 2, may be inspected by a person who so requests on payment of any fee.
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Schedule 1
Offerors

Bain Pacific Associates, L.L.C.
BCIP Associates II
BCIP Associates II-B
NZ Investment I, L.L.C.
Pacific Equity Partners (NZ) Limited
Pacific Equity Partners Fund I Pty Limited
PEP Co-Investment Pty Limited
PEP Investment Pty Limited
Graeme Wickham and Richard Fyers (jointly)
Richard Fyers and Graeme Wickham (jointly)
Randolph Street Partners II
Beth Cowsill, Mark Cowsill, and John Cowsill (jointly)
Eric Wilson
Evangelia Henderson
Henk Roling
Liz Lyons
Malcolm Tubby
Robyn Henderson
Ray Nicholls
Peter Hasko
Andrew Fraser.

Schedule 2

Agreements

cls 7, 11

Agreements

The agreement called "Contract for Supply of Fruit Juice Concentrates and Related Products" dated 25 June 1998 and made between ENZA Foods New Zealand Limited (under its former name Fruco Processors (NZ) Limited) and Fruco Beverages Limited

Excluded Provisions

The definitions after the definition of the term "Good Industry Practice" and before the definition of the term "Processing Fruit" on page 3.

The dates in clauses 2.1, 2.2, and 2.4

The second and third words in the headings to clauses 2.2 and 2.4.

The word immediately preceding the word "anniversary" in each place where that word occurs in clause 2.4.

The text after the word "Agreement," and before the word "of" in line 2 of clause 3.1.

The text after the words "Aromas and" and before the word "and" in line 3 of clause 3.1.

The text after the word "least" and before the words "of Beverages" in line 3 of clause 3.1.

The text after the words "Requirements of" and before the word "for" in line 4 of clause 3.1.

The text after the words "up to" and before the word "of" in line 4 of clause 3.1.

The text after the words "Requirements of" and before the word "from" in line 5 of clause 3.1.

The text after the word "Beverages" and before the word "of" in line 3 of clause 3.2.

The text after the word "to" and before the word "of" in line 6 of clause 3.2.

Clause 3.5.

The fifth and sixth lines of clause 5.5(e).

The third word of the heading to clause 6.

The text after the words "will pay" and before the words "supplied by" in clause 6.1, except for the words "for all".

The first 2 lines of clause 6.2, except for the words "Prices: The same" and "price will apply to all" and "supplied in each" and "period".

Clause 6.2(a) and (b), except for the words "commencing on" and "and ending on" in each case.

Agreements**Excluded Provisions**

Clause 6.3, except for the words “Determination of” and “Prices: The price of” and “supplied during” and “shall, subject to the provisions of clauses 6.8, be” and “within 10 Business Days of the end of the” and “in accordance with the formula:”.

Clauses 6.4, 6.5, and 6.6.

Clause 6.8, except for the first line.

Clause 6.9.

The text after the words “the relevant” and before the words “pursuant to” in, and the last 3 words of, clause 6.10.

Clauses 6.11, 6.12, and 6.14.

The first 7 lines of clause 6.15 up to the words “will be reviewed”, and the text after the words “prior to” and before the words “to take” in line 8.

The first word, the text after the word “the” and before the word “price”, and the last 3 words of clause 6.16.

Clause 6.17, except for the first 5 words and the last 11 words.

The last word of the heading to clause 7.

The sixth word in the first line of clause 7.1.

The second line of clause 7.1, except for the words “in any” and “shall be” and “for that”.

The text after the words “payment for” and before the words “sold by” in clause 7.2.

The third word of the heading to clause 8.

The text after the words “per litre” and before the words “purchased by” in the first line of clause 8.1 and the second and third lines of clause 8.1, except for the words “Processors under this Agreement in” and “shall be” and “for that”.

The last 5 words in the first line and the figure stated in the third line of clause 8.2.

The first 3 words and the word after the words “payment for” and before the words “sold by” in clause 8.3.

The third, fourth, sixth, and seventh words, and the date, in clause 8.4.

The last word of the heading to clause 9.

Clause 9.1.

Agreements

The agreement called "Agreement for Sale and Purchase of Assets" dated 15 October 1999 and made between Lion Nathan Soft Drink Investments Limited, Pepsi-Cola Seven-Up Bottlers (N.Z.) Limited, Lion Nathan Limited, Frucor Beverages Limited and Beverages Holdings Limited

The agreement called "Exclusive Bottling Appointment" dated 14 October 1999 and made between PepsiCo, Inc., Seven-Up International (a division of The Concentrate Manufacturing Company of Ireland), Frucor Beverages Group Limited (then Beverages Holdings Limited) and Frucor Soft Drinks Limited

Excluded Provisions

The word after the word "supplies" and before the words "to Beverages" in clause 9.2.

The seventh, eighth, and eleventh words of the first line, and the words before the word "produced" in the second and third lines, of clause 9.3.

Clause 9.4, except paragraph (d).

The text after the words "no later than" and before the words "following delivery" in clause 11.1(a).

The text after the words "level of" and before the word "Processors" in clause 11.3(b).

Clauses 11.5, 13.3, and 20, and Schedules 1 and 2.

The figure in the definition of the term "Agreed Rate" on page 1.

The figure in the definition of the term "Loan" on page 4.

The figures in clause 3.1(a) and (b).

The figures in clause 5.1(a), clause 5.1(c), and clause 6.

The figure in clause 12.3(b).

Schedules 1, 2, 3, 5, and 7.

The text after the words "shall be for" and before the words "commencing from" in the first 2 lines of clause 1(b).

All of clause 1(b) after the first 2 lines.

Clause 1(d).

All figures (apart from any reference to "8oz") in clause 2(a).

All of clause 2(d) after the words "unchanged until", except for the words "the price for each Unit will be adjusted"

All of clause 4 after the words "time for" in line 2.

The first sentence of clause 6.

All of clause 9 after the word "only" in line 1, apart from the final sentence.

Clause 10 and all of clause 15 except for the first and last sentences.

The final 2 sentences of clause 17.

Clause 22(b), (c), and (d).

Agreements

The Agreement called “Non-Competition Agreement” dated 14 October 1999 between Frucor Beverages Limited, Frucor Soft Drinks Limited and PepsiCo, Inc.

The Exclusivity Agreement referred to as the World Wide Exclusivity Agreement for V Compound signed on or about 21 May 1999 between Frucor Beverages Limited and [the Manufacturer]

Excluded Provisions

The text in clause 22(e) after the words “fail to” in line 2 and before the words “the Company” in line 4.

The text in clause 22(e) after the words “the Bottler” at the end of line 5 and before the words “and stipulate” in line 6.

The text in clause 22(e) after the words “effective immediately” in line 10 and before the words “and without” in line 12 and the final sentence.

Clause 22(f).

The text after the words “equal to” and before the words “per case” in the third to last line of clause 24.

The final words of clause 25(b), after the word “concentrate” in line 4.

The text after the word “within” and before the words “of the” in line 4 of clause 28.

Exhibits A and B.

The fifth item in the Table of Contents.

Recital E on page 1.

The definition immediately after the definition of the term “LNSDI” in clause 1.1.

The text after the words “Appointment Date” in clause 2.

The text after the words “an amount equal to” and before the words “on the date” in clause 4(a).

The figure in clause 4(b).

Clause 5.

The text after the words “pay FSDL” and before the words “rebate of” and the figure stated in clause 6.1.

The name and all description and other details of the manufacturer and supplier.

All of clause 1 after the words “supplied by” in line 2, except for the word “for” and the words “Energy Compound”.

The text in line 2 of clause 2 apart from the words “minimum quantity of” and “in total for” and “Energy Compound”.

The word after the word “year” and before the word “starting” in line 3 of clause 2.

The text after the word “market” and before the words “to any” in line 4 of clause 2.

Agreements

The Agreement called “International Distribution Agreement” dated March 2000 and made between Frucor Beverages Limited and Petty, Wood & Co. Limited

Excluded Provisions

The final line of clause 2 apart from the words “The minimum batch order quantity for” and “shall be”.

The figure, and the text after the words “order of” and before the words “additional product”, in clause 3.

Everything in the box entitled “Product(s) Description”, other than those words themselves.

The figures in the definitions of the terms “Minimum Order Requirement”, “Annual Minimum Order Requirement”, “Price”, and “Maximum Wholesale Price” on page 1.

The figures in clauses 3.3, 3.4, 4.1, and 4.2. All of clause 5.1 apart from the words “The Distributor must make payment for the Products” and “or otherwise on terms specified by Frucor or otherwise agreed in writing”.

Line 2 of clause 5.3 except for the words “in full” and “(“Due Date”)”.

The figure in clause 5.5.

The text after the word “within” and before the words “of delivery” in line 1 of clause 7.2(a).

The text after the words “will have” and before the words “use by life” in clause 7.4.

The text after the word “on” and before the word “notice” in clause 11.1(d).

The text in the definitions of the terms “Distributor’s Margin” and “Maximum Wholesale Price” in clause 21.1.

Schedules 1, 2, and 3.

Dated at Wellington this 17th day of May 2000.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

L. A. J. Kavanagh,
Member.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on notification in the *Gazette* and expires on 31 December 2000, exempts Frucor Beverages Group Limited, the holders of equity securities in that company, and certain other persons from various provisions of the Securities Act 1978 and the Securities Regulations 1983 in the case of an offer of those securities to the public.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 19 May 2000.

This notice is administered in the Securities Commission.
