Securities Act (Pyne Gould Guinness Limited and Wrightson Limited) Exemption Notice 2005

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

1 Title

This notice is the Securities Act (Pyne Gould Guinness Limited and Wrightson Limited) Exemption Notice 2005.

2 Commencement

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

3 Expiry

This notice expires on the close of 28 February 2006.

4 Interpretation

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

Act means the Securities Act 1978

amalgamated company means Pyne Gould Guinness Limited (which is to be renamed PGG Wrightson Limited under the amalgamation)

amalgamating company means—

(a) Pyne Gould Guinness Limited:

(b) Wrightson Limited

amalgamation means the proposed amalgamation between the amalgamating companies by means of a scheme of arrangement to be approved in accordance with section 236 of the Companies Act 1993

designated date means a date that is not more than 21 days before the date on which the investment statement relating to the specified equity securities is sent to the investors

FRS-29 means the financial reporting standard known as Financial Reporting Standard No 29, approved under the Financial Reporting Act 1993

investors means shareholders in 1 or more of the amalgamating companies

Regulations means the Securities Regulations 1983

specified equity securities means equity securities issued by the amalgamated company that are, or are to be, offered under the amalgamation.

(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 regulation 3(1) of Regulations

The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted from regulation 3(1) of the Regulations in the case of specified equity securities.

6 Conditions relating to registered prospectus

(1) The exemption in clause 5 is subject to the condition that the registered prospectus relating to the specified equity securities contains—

(a) the information, statements, certificates, and other matters specified in clauses 2, 4 to 7, 16, 17, 21, 39, and 40 of Schedule 1 of the Regulations; and

(b) a statement to the effect that dissenting investors do not have the right of repurchase that dissenting shareholders would have if the amalgamation were effected under Part 13 of the Companies Act 1993; and

(c) a statement to the effect that it is a term of the offer of the specified equity securities that the amalgamation will not proceed, or will be unwound, if the board of Pyne Gould Guinness Limited is not satisfied on reasonable grounds that the amalgamated company will, immediately after the amalgamation becomes effective, satisfy the solvency test (as defined in section 4 of the Companies Act 1993); and

(d) any further matters required to be disclosed by the High Court following its consideration of the amalgamation proposal.

(2) The exemption in clause 5 is subject to the condition that the registered prospectus relating to the specified equity securities contains, or is accompanied by,—

(a) the information, statements, and other matters that would be required to be sent to the shareholders of the amalgamating companies under section 221(3) of the Companies Act 1993 (except for the copies of the certificates referred to in section 221(3)(b) of that Act and the statement referred to in section 221(3)(e) of that Act) if that section applied to the amalgamating companies; and

(b) a copy of the most recent audited consolidated financial statements of the amalgamating companies that comply with subclause (3); and

(c) if the date of allotment of the specified equity securities would be more than 9 months after the balance date of the financial statements of an amalgamating company referred to in paragraph (b), a copy of the interim consolidated financial statements of that amalgamating company that comply with subclause (3) (except that they need not be audited) for a period beginning on the

day after that balance date and ending on a date that is not more than 9 months later; and

(d) a prospective consolidated statement of financial position for the amalgamated company as at the date on which the amalgamation is proposed to take effect that complies with FRS-29; and

(e) prospective consolidated statements of financial position, financial performance, and cash flows for the accounting period ending on 30 June 2006 of the amalgamated company that in each case—

(i) are prepared as if the amalgamation had already been effected; and

(ii) comply with FRS-29; and

(f) statements by the directors of each amalgamating company as to whether, after due inquiry by them in relation to the period between 30 June 2005 and the designated date, there have, in their opinion, arisen any circumstances that materially adversely affect—

(i) the trading or profitability of the amalgamating company; or

(ii) the value of its assets; or

(iii) the ability of the amalgamating company to pay its liabilities due within the next 12 months; and

(g) statements by the directors of each amalgamating company that, between 30 June 2005 and the designated date, there have been no material changes in the nature of the business of the amalgamating company.

(3) Financial statements referred to in subclause (2)(b) and (c) comply with this subclause if—

(a) the statements comply with, and have been registered under, the Financial Reporting Act 1993; or

(b) in the case of interim consolidated financial statements, the statements have been prepared to comply with the Financial Reporting Act 1993 as if they required registration under that Act.

7 Condition relating to information memorandum

The exemption in clause 5 is subject to the condition that the investment statement relating to the specified equity securities

is accompanied by an information memorandum that explains the effect of the amalgamation.

8 Condition relating to date of allotment

The exemption in clause 5 is subject to the condition that the date of allotment of any specified equity securities is on or before 31 March 2006.

9 Exemptions from clauses 1(1) and 5 of Schedule 3D of Regulations

(1) The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted, in the case of specified equity securities, from the requirement to include in an investment statement, in the list of questions referred to in clause 1(1) of Schedule 3D of the Regulations, the question "*How much do I pay?*".

(2) The amalgamated company, the amalgamating companies, and every person acting on behalf of all or any of them are exempted, in the case of specified equity securities, from clause 5 of Schedule 3D of the Regulations and the italicised question immediately above that clause.

10 Conditions of exemptions in clause 9

(1) The exemption in clause 9(1) is subject to the condition that, in place of the question "*How much do I pay?*", the investment statement includes the question "*What will this cost me?*".

(2) The exemption in clause 9(2) is subject to the condition that the investment statement contains a brief description of the terms of exchange of the securities of the amalgamating companies for the securities of the amalgamated company.

Dated at Wellington this 29th day of August 2005.

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

[L.S.] J. Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on its notification in the *Gazette* and expires on 28 February 2006, exempts Pyne Gould Guinness Limited and Wrightson Limited, subject to conditions, from regulation 3(1) and clauses 1(1) and 5 of Schedule 3D of the Securities Regulations 1983.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- Pyne Gould Guinness Limited and Wrightson Limited intend to make their amalgamation proposal by way of a scheme of arrangement to be approved by the High Court under Part 15 of the Companies Act 1993, and so will be subject to such procedural and disclosure requirements as the High Court imposes under the Companies Act 1993; and
- in the circumstances, full compliance with the disclosure requirements of the Securities Act 1978 could result in duplication and impose added costs on the issuer with little added benefit for investors; and
- the exemption retains the issuer's and directors' liability for the offer by requiring the disclosure document to be registered as a prospectus, but assists compliance by tailoring the disclosure requirements to those more suited to an amalgamation; and
- as this amalgamation could proceed by way of an amalgamation under Part 13 of the Companies Act 1993, an exemption in a similar form to the Commission's class exemption for such amalgamations is appropriate with the addition of a statement drawing investors' attention to their differing rights under an amalgamation under Part 15 of the Companies Act 1993; and
- the condition of exemption requiring the registered prospectus to contain any further matters required by the High Court

to be disclosed to shareholders recognises that the amalgamation proposal is subject to approval by the High Court under Part 15 of the Companies Act 1993 and that in the course of its consideration of the merits of the proposal the High Court may decide that further information is required for investors.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 31 August 2005.
This notice is administered by the Securities Commission.