



Takeovers Code (Bacardi New Zealand Holdings Limited) Exemption Notice 2006

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

1 Title

This notice is the Takeovers Code (Bacardi New Zealand Holdings Limited) Exemption Notice 2006.

2 Application

This notice applies to acts or omissions occurring on or after 6 October 2006.

3 Expiry

This notice expires on the close of 31 December 2007.

4 Interpretation

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

42 Below means 42 Below Limited

Act means the Takeovers Act 1993

Bacardi NZ means Bacardi New Zealand Holdings Limited

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

convertible securities means the following securities issued by 42 Below:

- (a) options to subscribe for ordinary shares issued by 42 Below to Panache International LLC pursuant to an import agreement dated 1 August 2005;
- (b) options to subscribe for ordinary shares issued by 42 Below to Macquarie New Zealand Limited on 23 June 2005;
- (c) rights to subscribe for ordinary shares issued by 42 Below to James Dale pursuant to a letter dated 7 November 2005;
- (d) rights to subscribe for ordinary shares issued by 42 Below to Paunui Holdings Pty Limited pursuant to a letter dated 27 June 2006;
- (e) warrants to subscribe for ordinary shares issued by 42 Below to Simon Coley pursuant to an agreement dated 13 March 2006

offer means a full offer to be made by Bacardi NZ for all the equity securities in 42 Below

ordinary shares means ordinary shares in 42 Below

series 2 warrants means 24,327,254 warrants to subscribe for ordinary shares issued by 42 Below and exercisable between 29 September and 27 October 2006.

- (2) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 6(1) of Code

Bacardi NZ is exempted from rule 6(1) of the Code in respect of any increase in the percentage of voting rights in 42 Below held or controlled by it as a result of the conversion of convertible securities, in accordance with the terms of those securities, acquired by it under the offer.

6 Exemption from rule 8(2) of Code

Bacardi NZ is exempted from rule 8(2) of the Code to the extent that it would otherwise be required to include an offer for the series 2 warrants in the offer.

7 Conditions of exemption in clause 6

The exemption in clause 6 is subject to the conditions that—

- (a) the offer to be sent to offerees under rule 43 of the Code is sent only after all series 2 warrants have expired; and
- (b) the notice of intention to make a takeover offer under rule 41(1) of the Code contains, or is accompanied by, in a form approved by the Takeovers Panel,—
 - (i) a summary of the exemption in clause 6; and
 - (ii) a statement of the effect of that exemption upon holders of series 2 warrants.

Dated at Auckland this 10th day of October 2006.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[Seal]

J C King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 6 October 2006 and expires on 31 December 2007. The Takeovers Panel has granted 2 exemptions from the Takeovers Code (the **Code**) to Bacardi New Zealand Holdings Limited (**Bacardi NZ**).

Exemption from rule 6(1) of Code

The Takeovers Panel has exempted Bacardi NZ from compliance with rule 6(1) of the Code in relation to the exercise of convertible securities acquired under a full offer (the **offer**) by Bacardi NZ for all of the equity securities in 42 Below Limited (**42 Below**).

In addition to ordinary shares, 42 Below has the following 5 classes of equity security on issue that are the subject of the offer (the **convertible securities**):

- options to subscribe for ordinary shares in 42 Below issued to Panache International LLC:
- options to subscribe for ordinary shares in 42 Below issued to Macquarie New Zealand Limited:
- rights to subscribe for ordinary shares in 42 Below issued to James Dale:
- rights to subscribe for ordinary shares in 42 Below issued to Paunui Holdings Pty Limited:
- warrants to subscribe for ordinary shares issued by 42 Below to Simon Coley.

Rule 6(1)(b) of the Code provides that a person who holds or controls 20% or more of the voting rights in a code company may not, except as provided in rule 7 of the Code, become the holder or controller of an increased percentage of the voting rights in the code company.

If Bacardi NZ holds more than 50% and less than 90% of the voting rights in 42 Below following completion of the offer, Bacardi NZ is likely to hold convertible securities issued by 42 Below. The conversion of the convertible securities into 42 Below shares would be a breach of rule 6(1)(b) of the Code, unless one of the exceptions in rule 7 applied.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from rule 6(1) of the Code for the following reasons:

- the increase will be the result of the exercise of rights attaching to securities obtained under the offer for which Bacardi NZ was obliged under the Code to make an offer:
- the resulting increase will be the same as if the holder of the convertible securities had converted those securities into shares and then accepted the offer in respect of the resulting shares.

Exemption from rule 8(2) of Code

The Takeovers Panel has exempted Bacardi NZ from rule 8(2) of the Code to the extent that it would be required to include in the offer an offer for series 2 warrants (the **warrants**) issued by 42 Below. Rule 8(2) of the Code requires that a full offer must include an offer for all

of the securities in each class of equity securities in the target company.

The warrants may be exercised between 29 September and 27 October 2006 and lapse after the end of that period. Bacardi NZ intends to make the offer after the date of expiry of the warrants, but to send its notice of intention to make an offer before that date. As the warrants will still be on issue at the time of the takeover notice, Bacardi NZ would, without an exemption from rule 8(2), be required to include in its draft offer accompanying the takeover notice an offer for the warrants, despite the fact that Bacardi NZ intends that the actual takeover offer will not include an offer for the warrants as the warrants will have expired.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from rule 8(2) of the Code because the warrants will have ceased to exist by the time the offer is made and the offer will not need to include an offer for the warrants.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 October 2006.
This notice is administered by the Takeovers Panel.
