

IN THE AUSTRALIAN COMPETITION TRIBUNAL

of 2013

**MURRAY GOULBURN CO-OPERATIVE CO LIMITED**

**RE: PROPOSED ACQUISITION OF WARRNAMBOOL CHEESE  
AND BUTTER FACTORY COMPANY HOLDINGS LIMITED**

### **Certificate identifying annexure**

This is the annexure marked "DMN24" now produced and shown to David Michael Noonan at the time of signing his statement on 28 November 2013.

**Annexure DMN24**  
**WCB director recommendation to accept Saputo offer**

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8 October 2013

## Recommended \$7.00 cash per share takeover offer from Saputo

Warrnambool Cheese and Butter Factory Company Holdings Limited (ASX: WCB) (**WCB**) today announces that it has entered into a Bid Implementation Deed with Saputo Inc. (TSX: SAP) (**Saputo**) for a recommended off-market takeover offer by Saputo to acquire all of the shares of WCB for \$7.00 cash per share (**Offer**).

**The Board of Warrnambool Cheese and Butter Factory Company Holdings Limited unanimously recommends shareholders accept Saputo's Offer, in the absence of a superior proposal.**

### Highlights of Saputo's Offer for WCB shareholders:

- Recommended Offer of \$7.00 cash per WCB share, valuing WCB at \$392.7 million on a fully diluted basis
- Saputo's Offer gives WCB the discretion to pay two fully franked special dividends of up to \$1.31 per share in aggregate. Any special dividends would be deducted from the Offer price of \$7.00 cash per share payable by Saputo
  - If Saputo obtains an interest in at least 50.1% of WCB shares, WCB may pay an initial special dividend of up to \$0.46 per share
  - If Saputo obtains an interest in at least 90% of WCB shares, WCB may pay a subsequent special dividend of \$0.85 per share
- If either or both special dividends are paid, some WCB shareholders may also derive additional value above \$7.00 from the franking credits attached to those special dividends. The value from these franking credits will be up to \$0.56 per share for some WCB shareholders if both special dividends are paid. Importantly, the value of franking credits varies depending on the tax position of individual WCB shareholders
- The headline Offer price of \$7.00 cash per WCB share represents a 57.0% premium to the 1 month volume weighted average price of \$4.46 per WCB share calculated up to and including 11 September 2013, being the last trading day before Bega's offer was announced
- Saputo's Offer is superior to Bega's offer in terms of value and conditionality
- Saputo has made strong commitments to WCB suppliers, employees and the retention of WCB's corporate identity and brands

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**WCB's directors unanimously support Saputo's Offer and recommend that WCB shareholders accept the Offer, in the absence of a superior proposal. Subject to that same qualification, each WCB director and executive intends to accept Saputo's Offer for all WCB shares they hold or otherwise control.**

CEO and Managing Director of WCB, David Lord, said:

*"The Board has carefully considered Saputo's Offer and has decided to unanimously recommend that WCB shareholders accept Saputo's Offer, in the absence of a superior proposal. Saputo's Offer underscores the strategic value of WCB's assets and vindicates the Board's decision to reject Bega's inadequate, highly conditional offer. Saputo's all cash Offer provides greater certainty for WCB shareholders and a substantial premium for their WCB shares."*

Chairman of WCB, Terry Richardson, said:

*“As well as the premium offered to WCB shareholders, Saputo’s commitments to WCB suppliers, customers and employees were critical factors in the Board’s decision to recommend Saputo’s Offer, in the absence of a superior proposal. We believe Saputo has recognised WCB’s 125 year long history and how critical our staff and suppliers are to the growth and success of our company and WCB’s importance to the local community more broadly.”*

*“Saputo does not have any current activities in Australia and has advised WCB that it does not intend to rationalise or redeploy any of WCB’s fixed assets. In fact, Saputo has advised WCB that it would be looking to invest further to expand WCB’s operations by increasing existing capacity or building additional capacity.”*

#### **Headline offer price – \$7.00 cash per share**

Saputo is offering WCB shareholders \$7.00 cash per share. Saputo's Offer price values WCB at \$392.7 million and represents a:

- 55.2% premium over the closing price of \$4.51 per WCB share on ASX on 11 September 2013, the last trading day prior to the announcement of Bega's offer;
- 57.0% premium over the 1 month volume weighted average price of WCB shares on ASX up to and including 11 September 2013;
- 21.1% premium to the implied value of Bega's offer, based on the closing price of Bega shares on ASX on 11 September 2013; and
- 11.2% premium to the implied value of Bega's offer, based on the closing price of Bega shares on ASX on 7 October 2013.

#### **Ability to pay two special dividends**

Saputo has agreed to allow WCB the discretion to pay two fully franked special dividends in the circumstances described below to utilise the benefit of WCB's current franking credit balance of \$31.6 million. The aggregate maximum amount of the two special dividends is \$1.31 per share and would be deducted from Saputo's Offer price of \$7.00 cash per share.

Irrespective of whether or not either or both special dividends are paid, WCB shareholders will still receive transaction value of \$7.00 cash per share.

##### *First special dividend*

The first special dividend is up to \$0.46 per share and is subject to Saputo obtaining a relevant interest of at least 50.1% of WCB shares and the Offer becoming unconditional other than the *No Prescribed Occurrences* condition (the conditions are outlined below).

If WCB exercises its discretion to determine and pay a first special dividend of \$0.46 in the circumstances described above, WCB shareholders who accept Saputo's Offer and remain a WCB shareholder on the record date for that dividend would receive:

- a payment of \$6.54 cash from Saputo; plus
- a fully franked special dividend of \$0.46 from WCB,

delivering total transaction value of \$7.00 cash per share.

##### *Second special dividend*

The second special dividend will be an amount equivalent to \$1.31 less the amount of the first special dividend. Assuming the first special dividend is \$0.46 per share, the second special dividend will be \$0.85 per share and is

subject to Saputo obtaining a relevant interest of at least 90% of WCB shares and the Offer becoming unconditional other than the *No Prescribed Occurrences* condition.

If WCB exercises its discretion to determine and pay a second special dividend of \$0.85 in the circumstances described above, WCB shareholders who accept Saputo's Offer and remain a WCB shareholder on the record date for the first and second special dividends would receive:

- a payment of \$5.69 cash from Saputo; plus
- a first fully franked special dividend of \$0.46 from WCB; plus
- a second fully franked special dividend of \$0.85 from WCB,

again delivering total transaction value of \$7.00 cash per share.

If WCB exercises its discretion to determine and pay a second special dividend, WCB will endeavour to ensure that the record date for that second dividend is the same as for the first special dividend.

#### **Franking credits may offer potential additional value above \$7.00 for some WCB shareholders**

Those WCB shareholders who can capture the full benefit of the franking credits associated with the first special dividend would receive an additional benefit valued at \$0.20 per share.

Those WCB shareholders who can capture the full benefit of the franking credits associated with the second special dividend would receive an additional benefit valued at \$0.36 per share.

It is important to note that the value of the franking credits associated with the first and/or second special dividends (if determined and paid) is not the same for all WCB shareholders and varies depending on the tax position of individual shareholders (including whether a shareholder is an individual, a super fund or a corporate entity).

#### **Offer conditions**

Saputo's Offer is conditional on, among other things:

- approval by or statement of no objection from Australia's Foreign Investment Review Board;
- Saputo having a relevant interest in greater than 50% of the WCB shares by the close of the Offer;
- no material new acquisitions, disposals or other commitments by WCB beyond certain financial thresholds; and
- no material adverse change or prescribed occurrence events occurring with respect to WCB.

The full agreed terms and conditions of the Offer are set out in **Appendix 1**.

Saputo's Offer is subject to substantially fewer conditions than Bega's offer. The financial thresholds applicable to certain conditions in Saputo's Offer provide WCB with materially more latitude and operational flexibility than the equivalent conditions under Bega's offer. Accordingly, WCB's Board considers that Saputo's Offer is not only superior in terms of value but also in terms of execution certainty.

#### **Deal protections**

Consistent with the negotiated, recommended nature of Saputo's Offer, the Bid Implementation Deed contains certain break fee, exclusivity and other customary deal protections in favour of Saputo. WCB is also entitled to claim a break fee from Saputo in certain circumstances. The break fee payable by either party to the other is \$3.925 million (representing approximately 1% of WCB's equity value under the Offer).

A summary of these deal protection provisions and the other key terms of the Bid Implementation Deed are set out in **Appendix 2**.

### **Saputo's stakeholder commitments**

Saputo has informed WCB that if Saputo succeeds in acquiring 100% control of WCB, Saputo intends to:

- retain the Warrnambool Cheese and Butter name and corporate identity;
- continue to operate its facilities at Allansford and Mil Lel and look to increase manufacturing capacity;
- retain and grow the Warrnambool, Sungold, Great Ocean Road and other brands;
- explore opportunities in the export market to further develop these valuable brands; and
- support WCB's strategy of building a portfolio of higher margin products and deliver more customer-specific applications.

Given that Saputo does not have any current activities in Australia, Saputo has advised WCB that it does not intend to rationalise or redeploy any of WCB's fixed assets. In fact, Saputo has advised WCB that it would be looking to:

- invest further to expand WCB's operations by increasing existing capacity or building additional capacity;
- introduce new product lines, including from its own extensive portfolio of dairy products, as well as support WCB's own innovation and new product development to service the combined customer base; and
- establish WCB as an important part of Saputo's global operations, the centre of Saputo's operations in Australia and its main platform from which to service the demand for dairy products in the Asia Pacific region.

### **Milk supply**

Saputo has informed WCB that Saputo would seek to develop mutually beneficial relationships with the farmer suppliers of WCB through the payment of a leading competitive milk price to ensure that WCB remains the preferred customer for their milk, and continues to grow its milk intake.

Saputo does not have any existing milk purchasing operations in Australia. Accordingly, the acquisition of WCB by Saputo will not reduce the choices available to farmer suppliers. Moreover, Saputo's intention to invest in and develop WCB's operations should lead to a greater demand for milk, which should be to the benefit of farmer suppliers.

Saputo recognises WCB's ongoing support to its supplier base through its field services teams, various supplier engagement projects and local community support, and it would continue to support such commitments. Saputo also expects to maintain initiatives such as WCB's Supplier Relations and Pricing Policy Committee, which have been successful in building further lines of communication between processor and suppliers.

### **Employees**

Saputo has informed WCB that as Saputo does not currently have a presence in Australia, it is Saputo's intention that:

- the business of WCB will continue to be managed by the current senior management as a new division within Saputo;
- the current employees will continue to be employed by WCB; and
- WCB, as a division within Saputo, will be able to provide expanded career and development opportunities for its employees, a result of being part of a global organisation while maintaining strong Australian roots.

Saputo's intentions as outlined above are based on the operating and financial position of WCB and its commercial circumstances at the time Saputo acquires 100% control remaining the same in all material respects as they are today.

## Timing

Saputo has informed WCB that Saputo expects to dispatch its Bidder's Statement to all WCB shareholders containing detailed information relevant to the Offer by mid to late October 2013.

## Information on Saputo

Saputo is one of the top ten dairy processors in the world, the largest in Canada, the third largest in Argentina and among the top three cheese producers in the United States. Saputo is listed on the Toronto Stock Exchange under the symbol SAP, with a market capitalisation of approximately C\$9.6 billion. Saputo produces, markets, and distributes a wide array of dairy products of the utmost quality, including cheese, fluid milk, extended shelf-life milk and cream products, cultured products and dairy ingredients. Saputo's products are sold in more than 40 countries under well-known brand names such as Saputo, Alexis de Portneuf, Armstrong, Baxter, Dairyland, Dragone, DuVillage 1860, Friendship, Frigo Cheese Heads, Great Midwest, King's Choice, Kingsey, La Paulina, Milk2Go, Neilson, Nutrilait, Ricrem, Salemville, Stella and Treasure Cave.

Saputo employs approximately 12,000 people and operates 53 manufacturing facilities. Saputo generates consolidated annual revenues of approximately C\$8.6 billion.<sup>1</sup>

For further information on Saputo, please see the concurrent announcement released by Saputo to the ASX in relation to the Offer.

WCB shareholders with any questions can contact the WCB information line on 1300 880 732.

## Advisers

WCB is being advised in relation to the Offer by CIMB as its corporate adviser and Minter Ellison as its legal adviser.

## CONTACTS

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<sup>1</sup> Represents **Saputo's** pro forma consolidated revenues for the year ended 31 March 2013 had the acquisition on 3 January 2013 of Morningstar Foods, LLC taken place on 1 April 2012.

## Appendix 1 – Agreed Offer Terms and Conditions

### 1. Offer for Shares

- (a) Saputo or a wholly owned Subsidiary (for the purposes of these Offer terms **Saputo**) will make an offer to acquire all WCB Shares through an off market takeover bid under Chapter 6 of the Corporations Act.
- (b) Each WCB Shareholder may only elect to accept the Offer for all of their Shares.
- (c) Any WCB Shareholder who accepts the Offer will be entitled to retain any Rights that are declared, paid, made, arise or accrue to that WCB Shareholder up until the later of:
  - (i) that WCB Shareholder's acceptance being received by Saputo; and
  - (ii) the Offer becoming unconditional.
- (d) Any WCB Shareholder who accepts the Offer in respect of any WCB Share held by that person, will be entitled to any Permitted Dividend that is declared or paid in respect of that WCB Share after the Offer becomes unconditional provided that WCB Shareholder was the holder of that WCB Share at the record date for determination of entitlement to that Permitted Dividend.
- (e) Subject to the entitlement of a WCB Shareholder who accepts the Offer to any Permitted Dividend as determined in accordance with paragraph 1(d), it is a term of the Offer that Saputo will be entitled to all Rights attaching to or arising from each WCB Share acquired under the Offer.
- (f) Except as provided for in these Offer terms, Saputo acknowledges and agrees that the consideration payable to that WCB Shareholder under the Offer will not vary as a result of the declaration, payment, existence or accrual of any Rights.
- (g) WCB acknowledges and agrees that the WCB Dividend Reinvestment Plan will not apply to any Permitted Dividend amount.

### 2. Offer Price

- (a) The consideration under the Offer will be \$7.00 cash for each WCB Share.
- (b) The Offer Price will be reduced by the amount of any Permitted Dividend.

### 3. Offer Period

The Offer will remain open for an initial period of not less than one month and will be subject to Saputo's right to extend the period in its absolute discretion in a way permitted by the Corporations Act provided that the Offer Period does not exceed six months in total from the initial commencement of the Offer Period (unless WCB and Saputo otherwise agree).

### 4. Other securities

The Offer will extend to all WCB Shares that are on issue before the end of the Offer Period including, subject to Saputo obtaining a modification to section 617(2) of the Corporations Act, all new WCB Shares that are issued during the Offer Period under or as a result of:

- (a) the vesting and exercise of any WCB Performance Rights in existence as at the Announcement Date; or
- (b) the vesting and exercise of any WCB Performance Rights proposed to be granted to David Lord if the grant of these WCB Performance Rights is approved by WCB's Shareholders at the WCB's annual general meeting on 24 October 2013.

Saputo agrees that it will:

- (a) seek from ASIC a modification to section 617(2) of the Corporations Act to permit the Offer to extend to the WCB Shares referred to in paragraph 4 (to the extent that the modification is required); and
- (b) notify WCB in writing after any modification has been obtained (including by providing WCB with a copy of the relevant ASIC instrument).

## 5. Vesting of performance rights

Saputo acknowledges that the WCB Board may procure that all WCB Performance Rights vest on the Offer becoming unconditional.

## 6. Offer Conditions

The Takeover Bid is subject to the following conditions which must be satisfied or waived in accordance with the relevant legislation and the terms of the Bid Implementation Deed.

### (a) FIRB

Before the end of the Offer Period the occurrence of either of the following:

- (i) **(unconditional approval)** the Treasurer of Australia gives an approval, or states that it does not object, to the acquisition by Saputo of the WCB Shares under the Foreign Acquisitions and Takeovers Act 1975 (**FATA**) (that approval or statement of no objection to be subject to no conditions or only to those that Saputo considers in its discretion, acting reasonably, to be acceptable); or
- (ii) **(expiry of notice period)** the expiry of the relevant period following the giving of notice relating to the acquisition by Saputo of WCB Shares under the FATA without any interim or permanent order of prohibition being made under the FATA.

### (b) No regulatory actions

Between the Announcement Date and the end of the Offer Period (each inclusive):

- (i) no preliminary or final decision, order or decree issued by a Regulatory Authority is in effect;
- (ii) no action or investigation is announced, commenced or threatened by any Regulatory Authority; and
- (iii) no application is made to any Regulatory Authority (other than by Saputo or any of its Associates),

(other than an application to, or decision of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act in consequence of or in connection with the Offer) which restrains, prohibits or impedes, or threatens to restrain, prohibit or impede, or materially adversely impacts on (or is reasonably likely to restrain, prohibit or impede or materially adversely impact on) the making or completion of the Offer, the acquisition of any WCB Shares under the Offer, the completion of any of the transactions contemplated by the Offer or the rights of Saputo in respect of WCB or any WCB Shares.

### (c) Minimum Acceptance Condition

During or by the end of the Offer Period Saputo has a Relevant Interest in greater than 50% of the WCB Shares on a fully diluted basis.

### (d) No Prescribed Occurrence

Between the period from the Announcement Date and before the end of the Offer Period (each inclusive), no Prescribed Occurrence (as defined below) occurs.

**(e) No Material Adverse Change**

Between the Announcement Date and the end of the Offer Period (each inclusive), no Material Adverse Change (as defined below) occurs.

**(f) No material acquisitions, disposals or new commitments**

Between the Announcement Date and the end of the Offer Period (each inclusive), (other than Permitted Actions or as disclosed in writing to Saputo or as disclosed in a public filing with ASX before the Announcement Date) no member of the WCB Group:

- (i) **(no material acquisitions)** acquires, offers to acquire, agrees to acquire or announces an intention to acquire, one or more shares, companies, businesses, properties or assets (or an interest in one or more shares, companies, businesses, properties or assets), other than in the ordinary course of business, the total consideration for which, or the value of which, in aggregate exceeds \$10 million;
- (ii) **(no material disposals)** disposes of, offers to dispose of, agrees to dispose of or announces an intention to dispose of, one or more shares, companies, businesses, properties or assets (or an interest in one or more shares, companies, businesses, properties or assets), other than in the ordinary course of business, for an amount, or for which the book value (as recorded in WCB's statement of financial position as at 30 June 2013 is, in aggregate, greater than \$10 million; or
- (iii) **(no material commitments)** enters into, offers to enter into, or announces an intention to enter into, any agreement, lease, joint venture, partnership, management agreement, arrangement or commitment which would require expenditure other than in the ordinary course of business, or the foregoing of revenue, by any member(s) of the WCB Group of an amount or value which, in aggregate, exceeds \$10 million (for each separate agreement, lease, joint venture, partnership, management agreement, arrangement or commitment).

**(g) No distributions**

Between the Announcement Date and the end of the Offer Period (each inclusive), WCB does not declare, determine as payable or pay a distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie), other than any Permitted Dividend.

**(h) Conduct of WCB's business**

Between the Announcement Date and the end of the Offer Period (each inclusive) and other than Permitted Actions, no member of the WCB Group:

- (i) **(no entry into new contract of service)** enters, or agrees to enter, into any contract of service for the appointment of a director or senior manager;
- (ii) **(no change in existing contract of service)** varies, or agrees to vary any existing contract of service with any director or senior manager, including making or agreeing to make any substantial change in the basis or amount of remuneration of any director or senior manager (except as required by law). This condition does not apply to the vesting of any WCB Performance Rights or the issue of WCB Shares under the exercise of any WCB Performance Rights that are in existence at the Announcement Date or are granted to Mr David Lord if the grant of new WCB Performance Rights to him is approved by WCB's Shareholders at WCB's annual general meeting on 24 October 2013;
- (iii) **(no material contracts)** enter into, amends in a material respect, terminates or waives or otherwise forgoes any material rights under any agreement, arrangement or understanding to which WCB or any Subsidiary of WCB is a party that is material to the business or operation of WCB or any Subsidiary of WCB;
- (iv) **(no scheme of arrangement)** implements or agrees to implement any scheme or arrangement or compromise (including one for a reconstruction or amalgamation of any members of the WCB Group), or any analogous procedure, scheme or arrangement in any jurisdiction;

- (v) **(no special resolution)** makes any changes to its constitution or passes any special resolution;
- (vi) **(no new indebtedness)** other than in the ordinary course of business or to fund the Initial Permitted Dividend (as defined in paragraph 3(b) of Appendix 2):
  - (A) borrows any money or incurs new financial indebtedness (or agrees to do so); or
  - (B) enters into any guarantee or indemnity on behalf of, or provides security for the obligations of, any person or (agrees to do so); or
- (vii) **(no new Encumbrances)** other than in the ordinary course of business, grants or agrees to grant, any Encumbrances over any of its assets.

**(i) WCB's performance rights**

Between the Announcement Date and the end of the Offer Period (each inclusive) and other than as a result of a Permitted Actions, no WCB Performance Rights are granted or issued.

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## Appendix 2

### Summary of the Bid Implementation Deed

#### 1. INTRODUCTION

WCB and Saputo entered into a Bid Implementation Deed on 7 October 2013. The Bid Implementation Deed sets out the terms and respective obligations of the parties in relation to Saputo's offer to acquire all of the issued ordinary shares in WCB by way of off-market takeover bid.

A summary of the key terms of Bid Implementation Deed is set out below.

#### 2. VARIATION AND WAIVER

- (a) Subject to paragraph 2(a), Saputo may vary the terms and conditions of the Offer in any manner which is permitted by the Corporations Act.
- (b) Subject to the Corporations Act and paragraph 2(c), Saputo may at any time:
  - (i) declare the Offer to be free from any Condition; and/or
  - (ii) extend the Offer Period.
- (c) Saputo must not without WCB's prior written consent:
  - (i) waive the Minimum Acceptance Condition described in paragraph 6(c) of Appendix 1 until Saputo has obtained a Relevant Interest in at least 40% of the WCB Shares; or
  - (ii) extend the Offer Period beyond an aggregate Offer Period of 6 months.

#### 3. PERMITTED SPECIAL DIVIDEND

- (a) WCB agrees that, other than any Permitted Dividend, it will not announce, determine as payable, declare or pay any other dividend, capital return or distribution until after the End Date.
- (b) WCB and Saputo agree that any Permitted Dividend that is determined or declared by WCB will be subject to the following requirements and limits:
  - (i) if Saputo obtains a Relevant Interest of at least 50.1% of the WCB Shares and the Offer is declared or becomes unconditional other than the *No Prescribed Occurrences Condition*, WCB may (at its discretion) pay a fully franked dividend of up to \$0.46 per WCB Share (**Initial Permitted Dividend**) which WCB will fund from WCB's Funding Resources; and
  - (ii) if Saputo obtains a Relevant Interest of at least 90% of the WCB Shares and the Offer is declared or becomes unconditional other than the *No Prescribed Occurrences Condition*, WCB may (at its discretion) pay an additional fully franked dividend of up to \$1.31 per WCB Share less any Initial Permitted Dividend (**Additional Permitted Dividend**) provided the payment date for any Additional Permitted Dividend is no later than the date on which Saputo is obliged to pay for the acceptances that take its entitlement to at least 90% of the WCB Shares then on issue.
- (c) Provided that Saputo has become entitled under Part 6A.1 of the Corporations Act to proceed to compulsory acquisition of all outstanding WCB Shares, to the extent that WCB is unable to fund all of the Additional Permitted Dividend then Saputo agrees that it will provide a loan on arm's length terms to WCB to enable it to fund the payment of the Additional Permitted Dividend as contemplated in paragraph 3(b)(ii).

- (d) Saputo acknowledges that WCB intends to seek a class ruling on behalf of WCB Shareholders from the ATO in relation to the payment of any Permitted Dividend, which ruling may (without limitation) seek to confirm:
- (i) that WCB Shareholders are not precluded from entitlement to the franking credits and associated tax offset attached to any Permitted Dividend;
  - (ii) whether any of the Permitted Dividend is included in the amount of the capital proceeds received by WCB Shareholders for the Offer;
  - (iii) that the Commissioner of Taxation will not make a determination under section 204-30(3)(c) of the *Income Tax Assessment Act 1997* (Cth) or section 177EA(5)(b) of the *Income Tax Assessment Act 1936* (Cth) to deny any franking benefits on the Permitted Dividend.

Saputo agrees to provide any reasonable assistance reasonably required by WCB to obtain this class ruling on behalf of WCB Shareholders from the ATO.

- (e) WCB and Saputo acknowledge and agree that the receipt of this class ruling will not be a condition to the announcement, declaration, determination and/or payment of any Permitted Dividend.
- (f) WCB and Saputo acknowledges and agrees that:
- (i) any Permitted Dividend which is announced, declared or paid, must be a fully franked dividend;
  - (ii) the Offer Price will be reduced by the quantum of any Permitted Dividend declared or paid; and
  - (iii) the WCB Dividend Reinvestment Plan will not apply in relation to any Permitted Dividend.
- (g) WCB acknowledges and agrees that the calculation of the amount of any Permitted Dividend, any steps taken to obtain a class ruling as contemplated by paragraph 3(d) and the provision to any person of any information concerning the taxation implications of the payment of a Permitted Dividend for WCB or for any WCB Shareholders is a matter for WCB alone.
- (h) Saputo must notify WCB in writing at least 10 Business Days before it intends to free the Offer from the last of the Conditions remaining outstanding (**Outstanding Conditions**) so that the Offer becomes unconditional (with the date on which WCB receives this notification being the Conditions Notification Date).
- (i) Saputo agrees that:
- (i) it will not free the Offer from the No Prescribed Occurrences Condition before the date which is 10 Business Days after the Conditions Notification Date; and
  - (ii) it will free the Offer from the Outstanding Conditions so that the Offer becomes unconditional on the date which is 11 Business Days after the Conditions Notification Date,

provided that this paragraph 3(i) will cease to apply if there is a breach of any Outstanding Condition after the Conditions Notification Date and that breach is not waived by Saputo (in its absolute discretion).

#### 4. RECONSTITUTION OF THE BOARD

- (a) Subject to paragraph 4(b), WCB must procure that no later than five Business Days after:
- (i) the Offer is declared or becomes unconditional; and
  - (ii) Saputo acquires a Relevant Interest in more than 50% of the WCB Shares,

the following actions occur:

- (iii) those persons nominated by Saputo are appointed to the WCB Board and the boards of other members of the WCB Group, provided that:
  - (A) those persons sign consents to act as a director of the relevant member(s) of the WCB Group in a form satisfactory to WCB (acting reasonably); and
  - (B) those consents to act have been provided to WCB; and
- (iv) those WCB Directors and directors of other members of the WCB Group, as nominated by Saputo, resign as a director of the relevant member(s) of the WCB Group without any liability to those member(s),

so that those persons nominated by Saputo to be appointed to the WCB Board, once appointed to the WCB Board, comprise a majority of the WCB Directors.

- (b) WCB's obligations under paragraph 4(a) are subject to the following:
  - (i) until the end of the Offer Period, there must be at least four members of the WCB Board who are not nominees of Saputo or its associates and who are Supplier Directors;
  - (ii) Saputo must procure that its nominees on the WCB Board do not participate in any discussions or decisions of that board which relate to the Bid during the Offer Period; and
  - (iii) WCB will not be required to procure any change to the board of any member of the WCB Group if that change would result in the composition of that board ceasing to comply with the constitution of the relevant company or any applicable law.

## 5. EXCLUSIVITY

- (a) No Shop

During the Exclusivity Period, WCB and its representatives or associates must not directly or indirectly continue, solicit, invite or otherwise encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any third party in relation to or that could reasonably be expected to lead to a Competing Proposal or communicate an intention to do any of those things.

- (b) No Talk

Subject to the exception set out in paragraph 5(g), during the Exclusivity Period WCB and its representatives must not negotiate, enter into, approve, recommend or participate in negotiations or discussions with (or enter into any agreement, arrangement or understanding with) any third party in relation to or that could reasonably be expected to lead to a Competing Proposal, even if:

- (i) the Competing Proposal was not directly or indirectly solicited, initiated or encouraged by WCB or any of its representatives or associates; or
- (ii) the Competing Proposal has been publicly announced.

- (c) No Due Diligence

Subject to the exception set out in paragraph 5(g), during the Exclusivity Period WCB or any of its representatives or associates must not make available to any person or permit any such person to receive any non public information relating to any member of the WCB Group in connection with that third party submitting, formulating, developing, assessing or finalising a Competing Proposal.

## (d) Notification

Subject to the exception set out in paragraph 5(g), during the Exclusivity Period, WCB must immediately inform Saputo if WCB is approached by any person to discuss or engage in any activity that would breach its obligations in relation to the No Talk and No Due Diligence restrictions.

Further, WCB must provide in writing to Saputo a summary of all material terms of the Competing Proposal, including the identity of the third party who has made the approach and the terms and conditions of any Competing Proposal (to the extent known).

## (e) Matching Right

Subject to the exception set out in paragraph 5(g), if WCB receives a Competing Proposal, WCB must not enter into an agreement in relation to the Competing Proposal and must procure that none of the Directors change their recommendation in favour of the Takeover Bid, publicly recommend the Competing Proposal or make any public statement, or take any other action, to the effect that the Offer is no longer recommended unless WCB gives Saputo not less than 5 Business Days notice in writing of its intention to do so accompanied by all relevant details of the Competing Proposal, including the terms and conditions of the Competing Proposal and the identity of the relevant person or persons making the Competing Proposal.

Saputo will have the right at any time during the 5 Business Days following the receipt of the relevant notice to amend the terms and conditions of the Takeover Bid including increasing the amount of consideration offered under the Takeover Bid (**Counter Proposal**) and, if Saputo does so, the WCB Board must review the Counter Proposal in good faith.

If the WCB Board (or a majority of the Directors) determine that the Counter Proposal would be equivalent to, or more favourable to WCB Shareholders than the Competing Proposal (having regard to all aspects of the Counter Proposal and the Competing Proposal) WCB and Saputo must use their respective best endeavours to agree to any amendments to the Bid Implementation Deed and to implement the Counter Proposal, in each case as soon as reasonably practicable.

## (f) Equal Access to Information

Subject to the exception set out in paragraph 5(g), if WCB or any of its representatives or associates provide any material confidential information in relation to the operations of any member of the WCB Group to any third party in connection with or for the purposes of that third party submitting, formulating, developing, assessing or finalising an actual, proposed or potential Competing Proposal, which information has not previously been provided to Saputo, WCB must provide a copy of that information to Saputo.

## (g) Exceptions

The No Talk, No Due Diligence, Notification, Matching Right and Equal Access to Information restrictions do not apply in respect of a Competing Proposal that is received by WCB after the date of the Bid Implementation Deed if the WCB Board, after having first obtained written advice from its legal and financial advisers, has determined in good faith that:

- (i) the Competing Proposal is or may be reasonably expected to lead to a Superior Proposal having regard to the steps that the WCB Board proposes to take; and
- (ii) failing to respond to such Competing Proposal would be likely to constitute a breach of the fiduciary or statutory duties of members of the WCB Board.

For the purposes of these exclusivity provisions, the Current Bega Offer is a Competing Proposal and any potential or proposed improvement of that proposal notified by Bega to WCB attracts the operation of these exclusivity provisions.

## 6. BREAK FEE

### (a) Payment by WCB

A break fee of \$3,925,000 (inclusive of any GST) will be payable by WCB if any of the following occur:

- (i) at any time before the End Date, any Director fails to make or makes and then changes or withdraws a recommendation to WCB Shareholders to accept the Offer made under the Takeover Bid for all WCB Shares or otherwise makes any public statement that suggests that the Takeover Bid is no longer recommended (including in the context of any improvement in the terms or conditions of the Current Bega Offer), other than because this deed is terminated by WCB under paragraph 7(a);
- (ii) a Competing Proposal is announced before the End Date other than the Current Bega Offer and, within six months after the End Date the person making the Competing Proposal (whether alone or together with one or more associates), completes in all material respects a transaction of the kind referred to in paragraphs (a) to (f) of the definition of Competing Proposal. For this purpose completes in all material respects means the relevant Competing Proposal is free from any defeating conditions;
- (iii) a general meeting of WCB is convened by the WCB Board to consider and, if though fit, approve the implementation or taking of any step that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied, and any of the Directors recommend that WCB Shareholders vote in favour of implementing or taking that step;
- (iv) Saputo terminates this deed under paragraph 7(a)(i) or 7(b)(i); or
- (v) WCB or any of its representatives or associates does (or omits to do) anything (whether or not permitted under this deed) that results in any of the Conditions being breached or becoming incapable of being satisfied, and Saputo does not waive the Condition;
- (vi) WCB announces, pays or declares any dividend (other than a Permitted Dividend) or makes, or undertakes to make, any distribution or capital return at any time before the End Date;
- (vii) the happening of a Prescribed Occurrence which was not consented to by Saputo or has not been waived by Saputo; or
- (viii) WCB terminates this deed under paragraph 7(c).

### (b) Payment by Saputo

A reverse break fee of \$3,925,000 (inclusive of any GST) will be payable by Saputo if:

- (i) Saputo does not release its announcement on the Takeover Bid on ASX or TSX;
- (ii) Saputo does not pay the consideration due under the Offers in accordance with the terms and conditions of the Offer and the Bidder's Statement; or
- (iii) WCB terminates this deed under paragraph 7(a)(i).

## 7. TERMINATION

### (a) Termination by either party

The Bid Implementation Deed may be terminated by either party if:

- (i) the other party is in breach of a material term and the breach has not been remedied within 5 business days of the terminating party providing notice to the other party of its intention to terminate the Bid Implementation Deed or there is a material breach of a representation or warranty;

- (ii) a Court or Authority issues a final and non appealable order or ruling to takes an action which permanently restrains or prohibits the Offer;
- (iii) Saputo withdraws the Offer for any reason including non satisfaction of a Condition;
- (iv) the Offer Period ends without the Conditions being satisfied or waived; or
- (v) the Offer has not become unconditional by the End Date.

(b) Termination by Saputo

The Bid Implementation Deed may be terminated by Saputo if:

- (i) WCB is in breach of its exclusivity obligations under paragraph 5;
- (ii) any WCB Director changes or withdraws their recommendation that WCB Shareholders accept the Offer in respect of all their WCB Shares, or makes a public statement, or takes any other action, indicating that they no longer recommend or otherwise support the Offer or that they support a Competing Proposal other than because the Bid Implementation Deed has been terminated by WCB under paragraph 7(a); or
- (iii) any of the Conditions are breached or become incapable of being satisfied.

(c) Termination by WCB

The Bid Implementation Deed may be terminated by WCB if the WCB Board (or a majority of members of the WCB Board) change or withdraw their recommendation in accordance with the Bid Implementation Deed provided that WCB has complied with its obligations under paragraph 5.

## DEFINITIONS

Capitalised terms used in Appendices 1 and 2 have the meanings given to them below.

**ASIC** means the Australian Securities and Investment Commission.

**ASX** means ASX Limited or the Australian Securities Exchange, as the context requires.

**Bid Implementation Deed** means the bid implementation deed between WCB and Saputo dated 7 October 2013.

**Competing Proposal** means any proposal, offer, arrangement or transaction by a third party that, if completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 30% or more of WCB Shares or of the securities of any member of the WCB Group;
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 30% or more of WCB Shares or of the securities of any member of the WCB Group;
- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, WCB or any member of the WCB Group;
- (d) a person would acquire control (as defined in Section 50AA of the Corporations Act) of WCB or any member of the WCB Group;
- (e) a person may otherwise directly or indirectly acquire, or merge with, WCB or any member of the WCB Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership or synthetic merger); or
- (f) or any proposal by WCB to implement any reorganisation of capital or dissolution.

Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Encumbrance** means in relation to any asset:

- (a) a security interest under the *Personal Properties Securities Act 2009* (Cth);
- (b) any other mortgage, charge, pledge or lien;
- (c) an easement, restrictive covenant, caveat or similar restriction over property;
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (e) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (f) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of an interest in or dealing with property; or
- (g) an agreement to create anything referred to above or to allow any of them to exist.

**Conditions** means the conditions to the Offer set out in Appendix 1.

**Corporations Act** means the *Australian Corporations Act 2001* (Cth).

**Current Bega Offer** means the off market takeover bid announced by Bega Cheese Limited on 12 September 2013 and more fully set out in its Bidder's Statement dated 27 September 2013.

**Director or WCB Director** means a director of WCB as at the date of the Bid Implementation Deed.

**End Date** means the earlier of:

- (a) the date on which the Offer Period ends; and
- (b) 7 February 2014 or any later date as Saputo and WCB agree in writing.

**Exclusivity Period** means the period starting on the date of Bid Implementation Deed and ending on the first to occur of:

- (a) the termination of the Bid Implementation Deed; and
- (b) the End Date.

**FIRB** means the Foreign Investment Review Board.

**Material Adverse Change** means one or more events, matters, changes or circumstances including any litigation or dispute which (individually or when aggregated) have or could reasonably be expected to have, a material adverse effect on the business, financial or trading position, assets or liabilities, profitability or prospects of WCB or any of its subsidiaries (taken as a whole), including any one or more events, matters, changes or circumstances which have had, or could reasonably be expected to have, the effect of:

- (a) diminishing the net assets of WCB Group by \$10 million or more; or
- (b) diminishing the future recurring profit before income tax of the WCB Group by at least \$5 million per year,

other than:

- (c) any event, matter, change or circumstance arising from actions taken by the WCB Group with the prior written consent of Saputo, that approval not to be unreasonably withheld or delayed;
- (d) any event, matter, change or circumstance that is a Permitted Action;
- (e) any event, matter, change or circumstance disclosed to Saputo no later than 4 October 2013;
- (f) any event, matter, change or circumstance disclosed in public filings by a member of WCB Group to ASX or ASIC no later than 4 October 2013; and
- (g) any event, matter, change or circumstance in or relating to:
  - (i) economic, business, regulatory or political conditions in general;
  - (ii) credit, financial or currency markets in general or the state of the securities markets in general (including any reduction in market indices);
  - (iii) any change affecting the dairy industry generally and which impacts on the WCB Group and its competitors in a similar manner; or
  - (iv) any change in accounting policy required by law.

**Offer** means the takeover offer by Saputo (or its subsidiary) to acquire WCB Shares under the Takeover Bid and

**Offers** means each offer made to holders of WCB Shares under the Takeover Bid

**Offer Period** means the period the Offer is open for acceptance.

**Permitted Action** means an action specified in Schedule 4 of the Bid Implementation Deed.

**Permitted Dividend** means one or more dividends which are declared or determined by the WCB Board on or after the date of this announcement and which, in aggregate, total up to \$1.31 per WCB Share subject to the requirements and limits set out in paragraphs 3(b) and 3(f) of Appendix 2.

**Prescribed Occurrence** means any of the following events or occurrences:

- (a) WCB converts all or any of the WCB Shares into a larger or smaller number of shares;
- (b) WCB or a subsidiary of WCB resolves to reduce its share capital in any way;
- (c) WCB or a subsidiary of WCB:
  - (i) enters into a buy back agreement; or

- (ii) resolves to approve the terms of a buy back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (d) WCB or a subsidiary of WCB issues shares, or grants an option over its shares, or agrees to make an issue or grant an option over its shares other than the issue of WCB Shares under the:
- (i) vesting and exercise of any WCB Performance Rights in existence as at the date of this deed; or
- (ii) vesting and exercise of any WCB Performance Rights proposed to be granted to David Lord if the grant of these WCB Performance Rights is approved by WCB's Shareholders at WCB's annual general meeting on 24 October 2013;
- (e) WCB or a subsidiary of WCB issues, or agrees to issue, convertible notes;
- (f) WCB or a subsidiary of WCB disposes or agrees to dispose of the whole, or a substantial part, of its business or property;
- (g) WCB or a subsidiary of WCB grants a security interest, or agrees to grant a security interest in the whole, or a substantial part, of its business or property;
- (h) WCB or a subsidiary of WCB resolves to be wound up;
- (i) a liquidator or provisional liquidator of WCB or of a subsidiary of WCB is appointed;
- (j) a court makes an order for the winding up of WCB or of a subsidiary of WCB;
- (k) an administrator of WCB, or of a subsidiary of WCB, is appointed under section 436A, 436B or 436C of the Corporations Act;
- (l) WCB or a Subsidiary of WCB executes a deed of company arrangement; or
- (m) a receiver, a receiver and manager, or other controller (as defined in the Corporations Act) is appointed in relation to the whole, or a substantial part, of the property of WCB or of a Subsidiary of WCB,

provided that a Prescribed Occurrence will not include any matter that:

- (n) is a Permitted Action;
- (o) is required to be done or procured by WCB under this deed or which is otherwise contemplated by this deed; or
- (p) is approved in writing by Saputo, that approval not to be unreasonably withheld or delayed.

**Regulatory Authority** includes:

- (a) ASIC, ASX and TSX;
- (b) a government or governmental, semi governmental, administrative, fiscal or judicial body;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute or the rules of any financial market (as defined in Chapter 7 of the Corporations Act).

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Rights** means all accretions and rights that accrue to or arise from WCB Shares after the date of this deed, including all rights to receive dividends, to receive or subscribe for shares, notes or other securities and all other distributions or entitlements declared, paid, made or issued by WCB after that date including any Permitted Dividend.

**Saputo Group** means Saputo and its related bodies corporate.

**Subsidiary** has the meaning given in section 9 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal received after the date of Bid Implementation Deed (not resulting from a breach by WCB of any of its obligations under paragraph 5 of Appendix 2) that the WCB

Board determines acting in good faith and to satisfy what the WCB Board considers to be its fiduciary or statutory duties (after taking advice from its external financial and legal advisers):

- (a) is reasonably capable of being valued and implemented, taking into account all aspects of the Competing Proposal, including timing considerations, the identity of the person making it, any conditions and the likely availability of finance; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to WCB Shareholders as a whole than the Takeover Bid, taking into account all the terms and conditions of the Competing Proposal and all aspects of the Takeover Bid.

**Takeover Bid** means an off market takeover bid by Saputo (through its wholly owned subsidiary) for all WCB Shares under Chapter 6 of the Corporations Act which bid will incorporate the Offer on terms no less favourable than those in the Bid Implementation Deed.

**TSX** means Toronto Stock Exchange.

**WCB Board** means the board of directors of WCB as at the date of the Bid Implementation Deed.

**WCB's Funding Resources** means any one or more of the following:

- (a) cash at bank;
- (b) existing lines of credit available to WCB; or
- (c) new lines of credit available to WCB on commercial terms similar to the existing credit facility of WCB and not exceeding \$20 million,

provided that the application of these resources to fund any Initial Permitted Special Dividend (as defined in paragraph 3(b) of Appendix 2) does not materially interfere with:

- (d) the working capital needs of the WCB Group to conduct its business in the usual and ordinary course consistent with the manner in which the business and operations have been conducted in the 12 months prior to the date of this deed; or
- (e) the WCB Group's capacity to take any of the Permitted Actions.

**WCB Group** means WCB and its related bodies corporate.

**WCB Performance Rights** means performance rights issued by WCB to eligible employees under the Warrnambool Cheese & Butter Executive Performance Rights Plan, being rights to acquire WCB Shares for nil consideration.

**WCB Share** means a fully paid ordinary share issued in the capital of WCB.

**WCB Shareholder** means a holder of WCB Shares.