

PRIMO WATER HOLDINGS LLC

Filed by
PRIMO WATER CORP /CN/

FORM SC TO-T (Tender offer statement by Third Party)

Filed 01/28/20

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Telephone	813-313-1732
CIK	0001365101
SIC Code	2086 - Bottled and Canned Soft Drinks and Carbonated Waters
Industry	Non-Alcoholic Beverages
Sector	Consumer Non-Cyclicals
Fiscal Year	12/31

This Tender Offer Statement on Schedule TO is filed by Cott Corporation (“Cott”) and its indirect wholly owned subsidiary, Fore Acquisition Corporation, a Delaware corporation (the “Purchaser”). This Schedule TO relates to the offer by the Purchaser to exchange for each outstanding share of common stock, \$0.001 par value per share, of Primo Water Corporation, a Delaware corporation (“Primo”), (a) \$5.04 in cash and 0.6549 common shares of Cott, (b) \$14.00 in cash, or (c) 1.0229 common shares of Cott (together, the “transaction consideration”), subject in each case to the election procedures and, in each case of election to receive the all-cash or all-stock consideration, to the proration procedures described in the Prospectus/Offer, as defined below (collectively, subject to the terms and conditions set forth in the Prospectus/Offer and the related forms of Letter of Election and Transmittal, each as hereinafter described, and together with any amendments or supplements thereto, the “Offer”).

Cott filed with the U.S. Securities and Exchange Commission (the “SEC”) a Registration Statement on Form S-4 on January 28, 2020, relating to the offer and sale of common shares of Cott to be issued to holders of shares of Primo common stock validly tendered in the Offer and not properly withdrawn (the “Registration Statement”). The terms and conditions of the Offer are set forth in the Prospectus/Offer, which is a part of the Registration Statement and filed as Exhibit (a)(4) hereto (the “Prospectus/Offer”), and the related form of Letter of Election and Transmittal, which is filed as Exhibit (a)(1)(A) hereto (the “Letter of Election and Transmittal”). Pursuant to General Instruction F to Schedule TO, the information contained in the Prospectus/Offer and the Letter of Election and Transmittal, including any prospectus supplement or other supplement thereto related to the Offer hereafter filed with the SEC by Cott or the Purchaser, is hereby expressly incorporated into this Schedule TO by reference in response to items 1 through 11 of this Schedule TO and is supplemented by the information specifically provided for in this Schedule TO.

Item 1. Summary Term Sheet.

The information set forth in the sections of the Prospectus/Offer entitled “*Summary*” and “*Questions and Answers About The Offer*” is incorporated into this Schedule TO by reference.

Item 2. Subject Company Information.

(a) The subject company of the Offer is Primo Water Corporation (“Primo”), a Delaware corporation. The address and telephone number of Primo’s principal executive office is 101 North Cherry Street, Suite 501, Winston-Salem, North Carolina, United States 27101; phone: (336) 331-4000.

(b) As of January 24, 2020, there were 39,788,916 shares of Primo common stock, \$0.001 par value per share, issued and outstanding.

(c) The information set forth in the section of the Prospectus/Offer entitled “*Market Information and Dividend Matters*” is incorporated into this Schedule TO by reference.

Item 3. Identity and Background of Filing Person.

The information set forth in the sections of the Prospectus/Offer entitled “*The Companies - Cott*” and “*The Companies - The Purchaser*” and Annex D of the Prospectus/Offer entitled “*Directors and Executive Officers of Cott and the Purchaser*” is incorporated into this Schedule TO by reference.

Item 4. Terms of the Transaction.

The information set forth in the Prospectus/Offer is incorporated into this Schedule TO by reference, including the sections of the Prospectus/Offer entitled “*Summary*” “*The Transactions*” (including “*The Transactions—Accounting Treatment*,” “*The Transactions—Cott’s Reasons for the Transactions*,” and “*The Transactions—Primo’s Reasons for the Transactions*”), “*Exchange Offer Procedures*,” “*Merger Agreement*,” “*Tender and*

Support Agreements,” “*Material U.S. Federal Income Tax Consequences*,” “*Material Canadian Federal Income Tax Consequences*” and “*Comparison of Stockholders’ Rights*,” as well as Annex A, Annex B and Annex C of the Prospectus/Offer, and the information set forth in the Letter of Election and Transmittal is incorporated into this Schedule TO by reference, including the section of the Letter of Election and Transmittal entitled “*Instructions*.”

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

The information set forth in the sections of the Prospectus/Offer entitled “*The Companies*,” “*The Transactions—Background of the Transactions*,” “*The Transactions—Cott’s Reasons for the Transactions*,” “*The Transactions—Primo’s Reasons for the Transactions; Recommendation of Primo’s Board of Directors*,” “*The Transactions—Interests of Certain Persons in the Transaction*,” “*The Transactions—Certain Relationships with Primo*,” “*Merger Agreement*” and “*Tender and Support Agreements*” is incorporated into this Schedule TO by reference.

Item 6. Purposes of the Transaction and Plans or Proposals.

The information set forth in the sections of the Prospectus/Offer entitled “*Questions and Answers About the Offer—Why is Cott proposing the offer and the mergers?*,” “*The Transactions—Background of the Transactions*,” “*The Transactions—Cott’s Reasons for the Transactions*,” “*The Transactions—Plans for Primo*,” “*The Transactions—Delisting and Termination of Registration*,” and “*Merger Agreement*” is incorporated into this Schedule TO by reference.

Item 7. Source and Amount of Funds or Other Consideration.

The information set forth in the section of the Prospectus/Offer entitled “*The Transactions—Source and Amount of Funds*” is incorporated into this Schedule TO by reference.

Item 8. Interest in Securities of the Subject Company.

The information set forth in the sections of the Prospectus/Offer entitled “*The Transactions—Certain Relationships with Primo*” and “*Tender and Support Agreements*” is incorporated into this Schedule TO by reference.

Item 9. Persons/Assets Retained, Employed, Compensated or Used.

(a) The information set forth in the section of the Prospectus/Offer entitled “*The Transactions—Fees and Expenses*” is incorporated into this Schedule TO by reference.

Item 10. Financial Statements.

The information set forth in the sections of the Prospectus/Offer entitled “*Selected Historical Consolidated Financial Data of Cott*,” “*Selected Historical Consolidated Financial Data of Primo*,” “*Selected Unaudited Pro Forma Condensed Combined Financial Data*,” “*Comparative Historical and Unaudited Pro Forma Per Share Data*” and “*Where to Obtain Additional Information*” is incorporated into this Schedule TO by reference.

Item 11. Additional Information.

The information set forth in the Prospectus/Offer and the Letter of Election and Transmittal is incorporated into this Schedule TO by reference.

Item 12. Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
(a)(1)(A)	Letter of Election and Transmittal (incorporated by reference to Exhibit 99.4 to Cott's Registration Statement on Form S-4 filed on January 28, 2020)
(a)(1)(B)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit 99.5 to Cott's Registration Statement on Form S-4 filed on January 28, 2020)
(a)(1)(C)	Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit 99.6 to Cott's Registration Statement on Form S-4 filed on January 28, 2020)
(a)(4)	Prospectus/Offer (incorporated by reference to Cott's Registration Statement on Form S-4 filed on January 28, 2020)
(a)(5)(A)	Joint Press Release issued by Cott and Primo dated January 13, 2020 announcing execution of Agreement and Plan of Merger (incorporated by reference to Exhibit 99.1 to Form 8-K filed by Cott on January 13, 2020)
(a)(5)(B)	List of frequently asked questions provided to certain employees of Cott (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(C)	Email to employees of Cott (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(D)	Email to employees of DS Services of America, Inc. (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(E)	Email to certain suppliers of DS Services of America, Inc. (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(F)	Slide presentation entitled "Cott to Acquire Primo – Creating a leading pure play water company" (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(G)	Scripted portion of transcript of conference call held January 13, 2020 (incorporated by reference to Cott's filing pursuant to Rule 425 on January 13, 2020)
(a)(5)(H)	Q&A portion of transcript of conference call held January 13, 2020 (incorporated by reference to Cott's filing pursuant to Rule 425 on January 14, 2020)
(a)(5)(I)	Summary Advertisement
(d)(1)	Agreement and Plan of Merger, dated as of January 13, 2020, by and among Cott Corporation, Cott Holdings Inc., Fore Merger LLC, Fore Acquisition Corporation and Primo Water Corporation (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Cott on January 13, 2020)
(d)(2)	Amendment No. 1 to Agreement and Plan of Merger, dated as of January 28, 2020, by and among Cott Corporation, Cott Holdings Inc., Fore Merger LLC, Fore Acquisition Corporation and Primo Water Corporation (incorporated by reference to Exhibit 2.2 to Cott's Registration Statement on Form S-4 filed on January 28, 2020)
(d)(3)	Form of Tender and Support Agreement, dated as of January 13, 2020, by and among Cott Corporation, Fore Acquisition Corporation and certain stockholders of Primo Water Corporation (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Cott on January 13, 2020)
(d)(4)	Form of Side Letter, dated as of January 13, 2020, by and among Cott Corporation, Fore Acquisition Corporation and certain stockholders of Primo Water Corporation (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Cott on January 13, 2020)

Item 13. Information Required by Schedule 13E-3.

Not applicable.

SIGNATURES

After due inquiry and to the best of the undersigned's knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: January 28, 2020

FORE ACQUISITION CORPORATION

By: /s/ Thomas Harrington
Name: Thomas Harrington
Title: President and Chief Executive Officer

COTT CORPORATION

By: /s/ Thomas Harrington
Name: Thomas Harrington
Title: Chief Executive Officer

A registration statement relating to the securities proposed to be issued pursuant to the Offer to Exchange (as defined below) is being filed with the Securities and Exchange Commission and has not yet become effective. Such securities may not be sold nor may offers to buy such securities be accepted prior to the time the registration statement becomes effective. This announcement is neither an offer to purchase nor a solicitation of an offer to sell Primo common stock nor is it an offer to buy or a solicitation of an offer to sell Cott common shares, and information herein is subject in its entirety to the terms and provisions of the Offer to Exchange. The Offer to Exchange is made solely thereby and any amendment or supplement thereto, and is being made to all holders of Primo common stock. The Offer is not being made to (nor will tenders be accepted from or on behalf of) holders of Primo shares in any jurisdiction in which the making of the offer or the acceptance thereof would not be in compliance with the securities, "blue sky" or other laws of such jurisdiction.

Notice of Offer by

Fore Acquisition Corporation,

an indirect wholly-owned subsidiary of

Cott Corporation,

to exchange each outstanding share of common stock of

Primo Water Corporation

for

\$5.04 in Cash and

0.6549 Cott Corporation Common Shares

or

\$14.00 in Cash

or

1.0229 Cott Corporation Common Shares

(subject in each case to the election procedures and, in the case of a cash election or a stock election,

to the proration procedures described in this document and related letter of election and transmittal)

Cott Corporation ("Cott"), through its indirect wholly-owned subsidiary Fore Acquisition Corporation (the "Purchaser"), is offering, upon the terms and subject to the conditions set forth in the Offer to Exchange (as defined below), to exchange for each outstanding share of common stock of Primo Water Corporation ("Primo"), par value \$0.001 per share, that is validly tendered in the offer and not properly withdrawn:

- \$5.04 in cash, without interest and less any applicable taxes required to be deducted or withheld in respect thereof; and
- 0.6549 Cott common shares.

We refer to the above as the "mixed consideration." In lieu of receiving the mixed consideration, holders of Primo shares may elect to receive, for each Primo share that they hold, (1) \$14.00 in cash (we refer to this election as the "cash election") or (2) 1.0229 Cott common shares (we refer to this election as the "stock election").

Primo stockholders who tender (and do not properly withdraw) their Primo shares into the offer and do not make a valid election will receive the mixed consideration for their Primo shares. Primo stockholders who make the cash election or the stock election will be subject to proration to ensure that approximately 64.02% of the aggregate consideration in the offer will be paid in Cott common shares and approximately 35.98% of the aggregate consideration in the offer will be paid in cash.

THE OFFER AND THE WITHDRAWAL RIGHTS WILL EXPIRE AT 12:00 MIDNIGHT, NEW YORK CITY TIME, AT THE END OF THE DAY ON TUESDAY, FEBRUARY 25, 2020, UNLESS THE OFFER IS EXTENDED, WITHDRAWN OR VARIED. SHARES VALIDLY TENDERED PURSUANT TO THE OFFER MAY BE WITHDRAWN AT ANY TIME PRIOR TO THE EXPIRATION OF THE OFFER.

The offer is being made pursuant to an Agreement and Plan of Merger, dated January 13, 2020 (as such agreement may be amended, supplemented or otherwise modified from time to time in accordance therewith, the "merger agreement"), among Cott, Cott Holdings Inc., a wholly-owned subsidiary of Cott ("Holdings"), Fore Merger LLC, a Delaware limited liability company and a wholly-owned subsidiary of Holdings ("Merger Sub 2"), Fore Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Merger Sub 2 (the "Purchaser"), and Primo.

Cott common shares are listed on the New York Stock Exchange ("NYSE") under the symbol "COT" and on the Toronto Stock Exchange ("TSX") under the symbol "BCB." Primo common stock is listed on the NASDAQ Stock Market LLC under the symbol "PRMW." Cott intends to change its corporate name to "Primo Water Corporation" in connection with the closing of the transactions and to use the "PRMW" ticker symbol on both the NYSE

and TSX thereafter.

Cott and Holdings are filing an exchange offer statement on Schedule TO, Cott is filing a registration statement on Form S-4 (which, together with the related letter of election and transmittal, constitute the “Offer to Exchange”) and Primo is filing a Solicitation/Recommendation Statement on Schedule 14D-9 with the U.S. Securities and Exchange Commission (the “SEC”) on January 28, 2020 with respect to the offer.

The offer is the first step in Cott’s plan to acquire control of, and ultimately all of the outstanding equity in, Primo. Pursuant to the terms and subject to the conditions of the merger agreement, as soon as practicable following the consummation of the offer, Cott intends to consummate a merger of the Purchaser with and into Primo, with Primo surviving the merger (the “first merger”). The purpose of the first merger is for Cott to acquire all shares of Primo common stock that it did not acquire in the offer. In the first merger, each outstanding Primo share that was not acquired by Cott or the Purchaser (other than certain dissenting, converted and cancelled shares) will be converted into the mixed consideration or, at the election of the holder of such shares, the cash consideration or stock consideration, subject to proration to ensure that approximately 64.02% of the aggregate consideration in the first merger will be paid in Cott common shares and approximately 35.98% of the aggregate consideration in the first merger (as reduced by the Primo shares held by stockholders who have properly exercised and perfected appraisal rights under the DGCL) will be paid in cash. As a result of the first merger, the Primo business will be an indirect wholly-owned subsidiary of Cott, and the former stockholders of Primo will no longer have any direct ownership interest in the surviving entity (the “first surviving company”). The first merger will be governed by Section 251(h) of the DGCL, and, accordingly, no stockholder vote will be required to complete the first merger if the Purchaser consummates the offer.

Immediately following the first merger, the first surviving company will merge with and into Merger Sub 2 (which we refer to as the “second merger” and together with the first merger, the “mergers”), with Merger Sub 2 surviving the second merger. The entity surviving the second merger (the “surviving company”) will be a limited liability company. Cott and Primo intend and anticipate that the acquisition of the Primo common stock pursuant to the offer and the mergers together constitute a single integrated transaction that will qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”) and that the relevant requirements under Section 367(a) of the Code will be met. However, the completion of the offer and the mergers is not conditioned upon the receipt of an opinion of counsel to that effect. In addition, no ruling from the IRS regarding these matters will be obtained, and no assurance can be given that the IRS will not challenge the anticipated U.S. tax treatment or that a court would not sustain such a challenge. Immediately before the second merger, Cott will be the sole indirect owner of Primo, and none of the former Primo stockholders will have any direct economic interest in, or approval or other rights with respect to, the second merger.

Pursuant to the merger agreement, the obligation of Purchaser to consummate the offer is subject to customary closing conditions, including (i) shares of Primo stock representing at least a majority of the then-outstanding shares of Primo stock having been validly tendered and not properly withdrawn (the “minimum condition”), (ii) the expiration or termination of the waiting period applicable to the offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, (iii) the SEC having declared effective under the Securities Act of 1933, as amended, the registration statement on Form S-4 relating to the offer and no stop order suspending the effectiveness of such Form S-4 having been issued by the SEC or proceedings for that purpose having been initiated by the SEC, (iv) the absence of any injunction or other order issued by a court of competent jurisdiction prohibiting the consummation of the offer or the mergers or any pending action, law or order which prohibits or makes illegal the offer or the mergers and (v) other customary conditions set forth in the merger agreement. The consummation of the offer is not subject to any financing condition.

The Primo board of directors unanimously determined that the terms of the merger agreement and the transactions contemplated thereby, including the offer and the first merger, are fair to, and in the best interests of, Primo and its stockholders. The Primo board of directors has also resolved to recommend that the stockholders of Primo accept the offer and tender their shares of Primo common stock to the Purchaser pursuant to the offer.

Tendered Primo shares may be withdrawn at any time prior to the expiration date. Additionally, if Purchaser has not agreed to accept the shares for exchange prior to 12:00 midnight, New York City time, at the end of the day on Tuesday, February 25, 2020, Primo stockholders may thereafter withdraw their shares from tender at any time after such date until Purchaser accepts the shares for exchange. Once Purchaser accepts shares for exchange pursuant to the offer, all tenders not previously withdrawn become irrevocable.

The Purchaser is not providing for guaranteed delivery procedures, and therefore Primo stockholders must allow sufficient time for the necessary tender procedures to be completed, in accordance with the procedures set forth in the Offer to Exchange, during normal business hours of the Depository Trust Company (“DTC”) prior to the expiration date. In all cases, the Purchaser will exchange shares tendered and accepted

for exchange pursuant to the offer only after timely receipt by the exchange agent of certificates for shares (or timely confirmation of a book-entry transfer of such shares into the exchange agent's account at DTC as described elsewhere in the Offer to Exchange), a properly completed and duly executed letter of election and transmittal and any other required documents.

Primo stockholders should consider the potential effects of proration and should obtain current market quotations for Primo common stock and Cott common shares before deciding whether to tender pursuant to the offer and before electing the form of consideration they wish to receive.

If you do not tender your shares into the offer, but the first merger is completed, you will also receive the transaction consideration in exchange for your shares of Primo common stock (other than for certain dissenting, converted and cancelled shares).

Appraisal rights are not available in connection with the offer, and Primo stockholders who tender their shares in the offer will not have appraisal rights in connection with the first merger. However, if the Purchaser accepts shares in the offer and the first merger is completed, holders of shares of Primo common stock who did not tender their shares in the offer and satisfy the other requirements prescribed by Section 262 of the DGCL will be entitled to exercise appraisal rights in connection with the first merger. The "fair value" of Primo common stock may be greater than, less than or the same as the transaction consideration. A detailed discussion of appraisal rights may be found in the Solicitation/Recommendation Statement on Schedule 14D-9.

If the number of Primo shares tendered in the offer is insufficient to cause the minimum condition to be satisfied upon expiration of the offer (taking into account any extensions thereof), then (i) neither the offer nor the mergers will be consummated and (ii) Primo's stockholders will not receive the transaction consideration pursuant to the offer or mergers.

Concurrently with the execution of the merger agreement on January 13, 2020, Cott and the Purchaser entered into separate tender and support agreements with each of Primo's directors and executive officers, who beneficially own, in the aggregate, approximately 10.4% of Primo common stock as of January 10, 2020, to commit to tender their shares of Primo common stock in the offer and to make the stock election therefor, subject to certain limited exceptions.

The Schedule TO, Offer to Exchange and the Solicitation/Recommendation Statement on Schedule 14D-9 contain important information that holders of Primo securities should consider before making any decision regarding exchanging their securities. Primo stockholders are urged to read these documents carefully. The Solicitation/Recommendation Statement on Schedule 14D-9, the Offer to Exchange and certain other exchange offer documents will be made available to all of Primo's stockholders at no expense to them. The Offer to Exchange and the Solicitation/Recommendation Statement will be made available for free on the SEC's website at www.sec.gov. Copies of the documents filed with the SEC by Cott will be available free of charge under the heading of the Investor Relations section of Cott's website at www.cott.com/investor-relations/. Copies of the documents filed with the SEC by Primo will be available free of charge under the SEC filings heading of the Investors section of Primo's website at <http://ir.primowater.com/>.

Questions or requests for assistance or additional copies of this document may be directed to the information agent at the telephone numbers and address set forth below. Stockholders may also contact their broker, dealer, commercial bank, trust company or other nominee for assistance concerning the offer and the mergers.

The Information Agent for the Offer is:

[MacKenzie Partners, Inc. logo]

1407 Broadway
New York, New York 10018
(212) 929-5500

or

CALL TOLL FREE (800) 322-2885

Email: tenderoffer@mackenziepartners.com

January 28, 2020