

PUBLIC

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF INVESTMENT MANAGEMENT

Ref. No. 96-317-CC
ASX Settlement and
Transfer Corporation
Pty Ltd
File No. 132-3

By letters dated May 1 and June 17, 1996, you seek assurance that the staff would not recommend enforcement action to the Commission under Section 17(f) of the Investment Company Act of 1940 (the "Investment Company Act") or Rule 17f-5 thereunder, if a U.S. registered investment company (a "U.S. fund") holds securities of non-Australian issuers ("foreign issuers") that are quoted on the Australian Stock Exchange (the "ASX"), and electronically cleared and settled through the Australian Clearing House Electronic Subregister System ("CHES"), by holding CHES Units of Foreign Securities, as described in your letter.

Background

You state that CHES performs the electronic clearance and settlement of transactions in securities issued by Australian entities that are quoted on the ASX.¹ CHES acts as agent on behalf of individual issuers, and operates an electronic subregister, in a manner similar to that of a transfer agent, that is recognized at law as an integral part of each issuer's principal register of securityholders.² You also state that CHES does not operate as a depository and does not have an associated depository.

In ASX Settlement, you stated that CHES does not take physical possession of, or acquire any interest in, securities, and does not have any custodial role in relation to securities held on the CHES subregister. Rather, participants in CHES directly control the securities holdings in CHES, and such securities holdings are registered in the name of the participant, a wholly-owned subsidiary of a participant, or, in some instances, a sponsored holder.

¹ ASX Settlement and Transfer Corporation Pty Ltd ("ASTC"), a wholly-owned subsidiary of the ASX, operates CHES. You have represented that CHES is subject to the regulatory oversight of the Australian Securities Commission. See ASX Settlement and Transfer Corporation Pty Ltd (pub. avail. Apr. 19, 1994) ("ASX Settlement").

² The securities recorded on CHES's subregister are uncertificated. Although CHES-approved securities may be held in certificated or uncertificated form, securities held in certificated form are required to be converted to uncertificated form before they may be delivered in settlement of trades on the ASX.

You state that participants in CHESSE include brokers and certain institutional investors, including bank custodians and trustees. U.S. funds do not participate directly in CHESSE, but gain access to CHESSE through bank custodians participating in CHESSE. You also state that a U.S. fund's participation in CHESSE through its bank custodian does not affect the contractual relationship between the fund and its custodian.

Proposal

ASTC now wishes to expand CHESSE so that it can be used for the electronic clearing and settlement of transactions in securities of foreign issuers that are quoted on the ASX. You believe, however, that the jurisdictions in which many foreign issuers are organized may not recognize CHESSE transfers of those issuers' securities. To resolve this problem, you propose to establish CHESSE Depository Nominees Pty Ltd ("CDN"), a wholly-owned subsidiary of ASTC, which would hold legal title to the securities of foreign issuers that are electronically cleared and settled on CHESSE. CDN, in turn, would issue to investors CHESSE Units of Foreign Securities ("CUFS") which represent beneficial interests in the underlying securities of the foreign issuers. As with the current CHESSE system, participants in CHESSE will control the beneficial interest in securities of the relevant foreign issuers.

Under your proposal, the ASX would quote and trade the securities of foreign issuers, but not the related CUFS. CUFS would be used to effect the broker-to-broker settlement of trading in these securities.³ The buyer would have the option of either leaving the investment in the name of CDN in the form of CUFS, or converting the CUFS into share certificates, allowing the investor to hold direct legal title in its own right.

You represent that the principal difference between holding CUFS and holding the underlying securities is that the holder of CUFS would hold a beneficial interest in the underlying securities, while CDN would hold legal title in trust for the beneficial owner. You represent that CUFS holders will have the same rights and benefits as if they directly held the underlying securities.⁴

³ You state that a broker purchasing a non-Australian security would accept delivery of CUFS in satisfaction of the seller's obligation to deliver the underlying security.

⁴ You state that the one exception is with respect to jurisdictions in which shareholder voting may occur by a "show of hands." Under such a system, unless a poll
(continued...)

You represent that CDN does not maintain a register of CUFS; rather, the Rules obligate the foreign issuer or its agent to maintain a register of CUFS with respect to its shares. These Rules require the foreign issuer or its agent to ensure that the number of CUFS on the CUFS register maintained by the foreign issuer always reconciles with the number of shares registered in the name of CDN on the share register of the foreign issuer. You represent that CDN performs no function other than holding legal title to securities, and certain actions relating to meetings of shareholders. You maintain that CDN is a nominee, in effect, for the beneficial holder, and the mere fact of holding legal title does not make CDN a custodian of the CUFS or the underlying securities. You assert that because CDN does not serve a custodial function, it need not qualify as an "eligible foreign custodian," or otherwise comply with Rule 17f-5, in order for U.S. management investment companies to hold CUFS.

Analysis

Section 17(f) of the Investment Company Act governs custodial arrangements for U.S. investment company assets. Rule 17f-5 thereunder permits a U.S. fund to maintain its foreign securities in the custody of an "eligible foreign custodian." Rule 17f-5(c)(2)(iii) defines the term "eligible foreign custodian" to include a "securities depository or clearing agency, incorporated or organized under the laws of a country other than the United States, which operates the central system for handling of securities or equivalent book-entries in that country."

In ASX Settlement, the staff stated that it would not recommend enforcement action to the Commission under Section 17(f) or Rule 17f-5 thereunder if a U.S. fund maintained assets with an eligible foreign custodian that participates in CHESSE, and the fund's assets were recorded on CHESSE's electronic subregister. The staff noted in that letter that a system that is not a depository (and that does not have an associated depository), and in which securities do not come to rest, is not a central system for the handling of securities within the

⁴(...continued)

is demanded, shareholders may only vote in person. You state that it is unlikely that a CUFS holder would be entitled to attend shareholders' meetings, and thus may be precluded from voting in these situations. You represent, however, that the Securities Clearing House Business Rules (the "Rules"), which govern the operation of CHESSE, give CUFS holders the right to convert their holdings to certificated shareholdings at any time, and that they will normally be able to exercise that right prior to the voting record date.

meaning of Rule 17f-5(c)(2)(iii).⁵ In effect, the staff determined that an entity that does not serve a custodial function should neither be entitled to rely on nor be governed by Rule 17f-5.

On the basis of the facts and representations in your letter, particularly your representation that CDN does not serve a custodial function, we would not recommend that the Commission commence enforcement action under Section 17(f) of the Investment Company Act, or Rule 17f-5 thereunder, if a U.S. fund maintains CUFS with an eligible foreign custodian that participates in CHES, without treating CDN as a custodian subject to Rule 17f-5.



Edward J. Rubenstein
Senior Counsel

⁵ See also Reserve Bank of New Zealand (pub. avail. May 24, 1993). Although subparagraph (c)(2)(iii) defines "eligible foreign custodian" to include foreign clearing agencies as well as foreign securities depositories, the administrative history of Rule 17f-5 indicates that the subparagraph refers to both types of entities simply because a foreign securities depository may be denominated a "clearing agency" in certain countries. Investment Company Act Rel. No. 13724 at n. 31 (Jan. 17, 1984) (reproposing Rule 17f-5). Consequently, the staff focuses on the depository function of the foreign entities seeking no-action relief under Rule 17f-5(c)(2)(iii).



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1 May 1996

Mr Jack Murphy
Associate Director, Division of Investment Management
United States Securities and Exchange Commission
450 Fifth Street NW
WASHINGTON DC 20549

ACT ICA
SECTION _____
RULE Rule 17f-5
PUBLIC AVAILABILITY 8/13/96

Dear Mr Murphy,

INVESTMENT COMPANY ACT OF 1940 - SECTION 17(f) - CHESS UNITS OF FOREIGN SECURITIES ("CUFS")

ASX Settlement and Transfer Corporation Pty Ltd ("ASTC"), a wholly owned subsidiary of Australian Stock Exchange Limited, is responsible, through the Clearing House Electronic Subregister System ("CHESS"), for the electronic system of clearance and settlement of transactions in domestic securities quoted on the Australian Stock Exchange ("ASX"), and for the transfer of ownership pursuant to such transactions. Owing to CHESS and other ASX settlement reforms, the Australian equities settlement system is now regarded by external assessors as one of the world's most reliable and efficient systems.

ASTC now wishes to expand CHESS, so it can be used for the clearing and settlement of Australian transactions in non-Australian securities. For this purpose, legal title to the foreign securities will be vested in an Australian entity, but the full beneficial ownership will belong to the investor. A wholly-owned subsidiary of ASTC and ASX, called CHESS Depository Nominees Pty Ltd ("CDN") will offer to hold legal title to the securities. Investors' interests will be known as "CHESS Units of Foreign Securities" ("CUFS").

The introduction of CUFS as an enhancement of CHESS has broad industry support and the support and formal approval of the Federal Attorney General and the Australian Securities Commission ("ASC"), the government agency primarily responsible for regulating the securities industry.

To remove any possible perception that US management investment companies may be unable to hold securities in the form of CUFS, ASTC seeks an assurance from the staff of the Commission that in the opinion of the staff the holding by a US management investment company of securities (including US securities) in the form of CUFS, where legal title to the securities is vested in CDN, would not violate Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a), provided that the arrangements between the US company and its Australian custodian nominee comply with the requirements of the Act.

It is the basis of our submission that CDN is not a true depository within the meaning of subparagraph (c)(2)(iii) of Rule 17f-5 in that it does not serve a custodial function as typically characterised within the terms of the Rule. We therefore submit that the introduction of CUFS as

an enhancement of CHES should not alter the original view expressed by the staff of the Commission in response to ASTC's request in relation to CHES in 1994.

It appears to us, after a useful meeting with you in Sydney on 2 April 1996, that a "no interest" letter in such a form is more appropriate to the circumstances than a "no-action" letter which would express the staff's opinion on CDN's status under Rule 17f-5(c)(2)(iii) or (iv).

The following information is provided in support of our request.

SEC Staff's Previous Consideration of CHES

In April 1994 the staff of the Commission responded to a request from ASTC for an assurance that it would not recommend enforcement action under Section 17(f) of the Investment Company Act of 1940 should US management investment companies utilise CHES services. At that time, the Commission stated that CHES did not fall within the meaning of Rule 17(f)-5(c)(2)(iii) as it was not a depository and did not have an associated depository and therefore a "no action" letter was not in fact necessary.

The relevant conditions attached to the response were:

- CHES would not operate as a depository and would not have an associated depository;
- CHES would not acquire any interest in securities or change the nature of a security-holder's interest in securities. Holdings were to be registered in the name of a Participant, a wholly owned subsidiary of a Participant or a sponsored Holder. Holdings would not be registered in the name of CHES;
- an investment company's participation in CHES through a custodian would not affect the contractual relationship between the company and its custodian.

We enclose copies of correspondence which we have previously forwarded to you in relation to CHES. We ask that this correspondence form a part of our submission (refer Appendix A).

At that time, the staff of the Commission took the position in relation to CHES that,

"a system that is not a depository (and does not have an associated depository) and in which securities do not come to rest is not a central system for the handling of securities within the meaning of subparagraph (c)(2)(iii) of Rule 17f-5"

(letter from Julia Ulstrup to Christine Jones, 19 April 1994, p 2)

It was also stated,

"an entity that does not serve a custodial function should neither be entitled to rely on nor be governed by Rule 17f-5. You (ASTC) represent that CHES will not have any custodial role in relation to the securities recorded on the CHES subregister."

(ibid, p 2)

It was upon this basis that the staff of the Commission took the view that an assurance in relation to enforcement action would not be necessary.

CHES and Paperless Transfer of Securities

CHES serves as the electronic system for the transfer of all Australian securities traded on the Australian stock market through its automated trading system ("SEATS"). With the introduction of Phase II (Delivery versus Payment - the irrevocable exchange of good title to securities for good

value of cleared funds) on April 9, 1996, CHES has begun to settle all trades effected on the ASX through SEATS.

The principal difference between CHES and typical central depository systems is that CHES has implemented a name on register system which facilitates electronic transfer of securities. Each listed Australian company maintains a subregister within CHES for each class of its quoted securities. As soon as settlement is effected (on a net basis), the transfer of legal ownership of the relevant securities occurs electronically on the subregister. CHES does not acquire any interest in Australian securities, nor change the nature of security holder's interest in the securities. Under CHES legal title, not mere beneficial ownership of Australian securities, passes from the transferor to the transferee.

The securities of Australian companies listed on ASX have been progressively transferred to CHES since its introduction in September 1994. All Australian companies listed on the ASX are now on CHES and negotiations are nearing conclusion with the regulatory authorities of New Zealand and Papua New Guinea in order that companies incorporated in those jurisdictions may utilise CHES. At the time of writing, securities are held on the CHES Subregister by over 150,000 individual shareholders in over 904,000 "holdings". The total value of these securities is AUD\$183 billion; which is 54.52% of the market capitalisation of domestic equities in Australia.

ASX is now independently rated by GCSC as second only to the US as the most efficient market for settlement in the world. The establishment of CHES as a central clearing facility has provided the transfer of securities in dematerialised form and an electronic subregister system that will enable ASX to move from the present "T + 5" to a "T + 3" fixed settlement period in the near future.

Foreign Issuers and CHES

The securities of a company incorporated outside Australia cannot be approved for CHES unless the legal framework, including the electronic subregister, is recognised by the relevant foreign law. Legal recognition of CHES will be achieved in New Zealand and Papua New Guinea. This is not feasible, at least in the short term, in the case of other countries including the United Kingdom and the United States. If, for example, a UK issuer wishes to have its shares quoted in Australia, UK law will govern the validity of the transfer of the shares. While UK law may make some aspects of the transfer depend on the law of the jurisdiction where the relevant branch register is located, our legal advice is that CHES transfers of shares of a UK company would not be fully recognised in the United Kingdom even if those shares are registered on an Australian branch register of the UK company.

Approximately 45 foreign issuers are listed on ASX, with 65 securities of those issuers being quoted on the ASX. As mentioned previously, it is only the laws of PNG and New Zealand that will recognise CHES in the short term. This means that, in the absence of a facility such as CUF, settlement of ASX trades in foreign securities will continue to rely on the traditional paper based system. This constitutes a reversion to an inefficient system with the inherent risks, expenses and delays. Paper certificates must be marked and split, and paper transfers and certificates must be physically delivered to buying brokers and then to company registries, frequently interstate.

By way of example, we attach graphs (Appendices B1 & B2) representing trade and failed settlement statistics in respect of a major company formerly listed on the ASX. This company had approximately 29,000 shareholders at the time it was removed from the Official List of the Australian Stock Exchange in late 1995 after acquisition under a Scheme of Arrangement by its British parent company under which shareholders received shares in the British parent and those shares were admitted to quotation by ASX.

Upon implementation of the merger, it became necessary to revert to a paper-based settlement regime for trades in shares of the British parent effected on the ASX's market. The incidence of

failed settlements increased markedly as a result, from under 1% to 18%. The stock in the British parent company has suffered an associated drop in market liquidity at the same time.

CHES Units of Foreign Securities ("CUFS")

To enable transactions in non-Australian securities executed on ASX to be electronically settled and registered on almost the same basis as securities issued by Australian incorporated companies, with the resultant benefits, ASTC has developed CUFS as an enhancement to the existing CHES system.

ASX will quote and trade foreign securities which cannot, under the law of the jurisdiction in which the issuer has its primary listing, be transferred within CHES. CUFS will be used to effect broker-broker settlement of trading in the foreign securities. At this stage it is not intended that CUFS will be quoted or traded in their own right. However, it is intended that the underlying security be quoted and that a buying broker of the underlying security will accept delivery of CUFS in satisfaction of the seller's obligation to deliver the underlying security. The buyer will have the option of either leaving the investment in the form of CUFS, or requiring registration in the company's Australian branch (paper) register.

The principal difference between holding CUFS and holding shares is that the holder of CUFS will hold beneficial title to the equivalent number of shares in the relevant foreign company instead of legal title. The legal interest will be held by CDN pursuant to arrangements made between the issuer, its third party provider, ASX and ASTC. Securities in the name of CDN will be held on trust for the benefit of the CUFS holder. The CUFS Rules which are a part of the Securities Clearing House Business Rules (which are covered in more detail later) explicitly state this. CDN's charter will prohibit it from performing any function other than holding as trustee (see below, Powers and Functions of CDN).

Using CUFS, a seller transfers **beneficial** title of shares to buyers instead of **legal** title. The investor may choose to either leave a holding in the name of CDN or convert the CUFS into shares in order that the investor may hold legal title in its own right. The CUFS Rules explain how a conversion from CUFS to shares and vice versa, is to be effected.

To hold foreign securities in the form of CUFS, shareholders must be sponsored in the same way as shareholders in CHES. This entails signing a "sponsorship agreement" with a CHES "participant", generally an ASX broker or a non-broker participant such as a custodian or trustee company. A sponsorship agreement authorises the sponsor to deal with the holder's shares on his/her behalf, subject to express conditions which strictly limit what the sponsor may do.

The Securities Clearing House ("SCH") Business Rules which govern CDN and the foreign issuer contain provisions to ensure that CUFS holders receive all of the economic benefits which they would normally receive, had they been holding legal title to shares.

Although legal ownership of the underlying shares will vest in CDN, CDN is to be used in a legally "transparent" manner. In substance, the obligations which an issuer traditionally owes to shareholders, it will also owe in similar manner to CUFS holders.

The way in which this has been achieved is that the CUFS Business Rules oblige CDN (or any other depositary nominee approved by SCH) to grant a power of attorney in favour of the issuer, so that the issuer performs all the obligations which CDN, by virtue of the Rules, owes to CUFS holders. In addition, there is also an agreement between CDN and the issuer which describes in detail the agency role which the issuer performs on behalf of CDN.

An essential part of the transparency created as a result of the power of attorney is that it ensures that there is no discrimination between CUFS holders on the CHES Subregister and shareholders on the certificated register. A foreign issuer's obligations in relation to shareholders

(e.g.in relation to corporate actions) are exactly the same in content as its obligations to CUFS holders.

Under the CUFS system, the foreign issuer has the obligation to facilitate conversions from CUFS to certificated or from certificated to CUFS format by modifying the register, issuing modified certificates and signing transfer forms.

It is in this way that there is a direct flow of all relevant corporate actions and information from the issuer to the CUFS holder, as if the CUFS holder held the underlying security. The one exception is in the case of voting rights. This is discussed below.

The underlying securities themselves are lodged with the relevant Foreign Issuer for safekeeping, as required by the provisions of SCH Business Rule 3A2.1(e).

It will be seen that these special arrangements are markedly different from the arrangements between an investor and a depositary or custodian nominee. No deposit agreement is involved with CUFS in the way that a deposit agreement is normally involved with depositary receipts. Nor do CUFS require a custodian agreement of the kind that a foreign investor would make with a local custodian nominee, though it is assumed that foreign investors will continue to use custodian nominees just as they do now. This is because the obligations which would normally be outlined in the deposit agreement are contained in the CUFS Business Rules. These Rules are a part of the SCH Rules which by statute have the effect of a contract under seal.

As CDN's holding of securities of the Issuer would make it subject to the Corporations Law, the Australian Securities Commission will shortly issue a declaration which specifically exempts CDN from the application of certain parts of the Corporations Law. A copy of the draft ASC declaration is enclosed for your perusal (Appendix C1). As you will see from the declaration, CDN will be exempt from the application of Division 2 and Division 3 of Part 7.12 of the Corporations Law. Division 2 relates to the issue of securities and the requirement to issue a prospectus etc and Division 3 relates to restrictions on allotment of shares. We also attach a copy of the ASC declaration in relation to CUFS (Appendix C2) which essentially provides that they are "marketable securities" under the relevant provisions of the Corporations Law.

Voting Rights

As in the case of depositary receipts, the voting rights available to a CUFS holder are not quite as extensive as for the holder of the underlying security. For example, the CUFS holder cannot stipulate who is to be the proxy. Nor can a CUFS holder participate in a "show of hands" vote.

Under the SCH Business Rules and arrangements between the foreign issuer and ASTC, the foreign issuer will be obliged to communicate with CUFS holders directly as if they were security holders on the foreign issuer's register. Therefore, where the securities are shares, each CUFS holder will be entitled to receive a notice of a shareholders' meeting as if each of them was a shareholder. The Business Rules will require, if a shareholder is entitled under the law of the foreign issuer to vote by proxy at the meeting, that the foreign issuer must give the CUFS holder the opportunity to give a direction to CDN in the same circumstances. These directions will be lodged with the foreign issuer's Australian share registry, which will count them and then instruct CDN to lodge a proxy vote as shareholder in accordance with the respective directions of the CUFS holders. In this way proxy votes of CUFS holders will be recorded in much the same way as the votes of shareholders. The Business Rules impose an obligation on CDN to lodge proxy votes in this manner, and do not allow it to vote other than in accordance with the directions of CUFS holders.

In some jurisdictions voting at a meeting of shareholders is show of hands, unless a poll is demanded. If a poll is demanded, proxy votes are counted but if a poll is not demanded, only the shareholders who are personally present can vote. Where the foreign issuer is from a jurisdiction which has such rules, it is unlikely that a CUFS holder will be entitled to attend the shareholders'

meeting and vote on a show of hands. However, the Business Rules give CUFS holders the right to convert their holdings to certificated shareholdings at any time, and they will be normally able to exercise that right prior to the foreign issuer's record date for voting purposes.

Powers & Functions of CDN

The Memorandum and Articles (the charter) of CDN are currently being reviewed so as to restrict the powers of CDN to acting solely as trustee for and on behalf of CUFS holders. CDN will not be able to engage in securities trading, securities lending, underwriting, giving loans to industrial or commercial enterprises or any other commercial activity.

SCH Business Rules and CUFS

The SCH Business Rules (of which the CUFS Rules are a part) are by virtue of the Corporations Law (section 779F) a contract under seal between:

SCH and each issuer;

SCH and each SCH participant;

each issuer and each SCH participant; and

between an SCH participant and each other SCH participant.

By virtue of this section each of the persons mentioned above agrees to observe and perform the provisions of the SCH Business Rules as in force for the time being.

The obligations of CHES users to comply with the SCH Business Rules are reinforced in other ways. Thus:

brokers are obliged to comply by virtue of ASX Articles of Association and Business Rules;

non broker participants are obliged to comply because of the contract created by acceptance of the application for non broker participant status. This acceptance contains a covenant wherein the non broker participant agrees to comply with the SCH Business Rules; and

issuers are obliged to comply by virtue of ASX Listing Rule 3D(2A).

A more detailed description of the Rules and the issues generally relating to CUFS is to be found in the document titled "**AUSSIE CUFS - A PROPOSAL TO SETTLE TRANSACTIONS IN FOREIGN SECURITIES THROUGH CHES.**" A copy of this document is included for your information (Appendix D). As you will see, the document refers to the Rules in the future tense. The Rules have in fact been drafted and are now finalised, subject to minor modification by and approval of the Australian Competition and Consumer Commission ("ACCC"). As no significant objections have been raised by the ACCC, we believe their approval will follow as a matter of course.

The SCH Business Rule amendments to accommodate CUFS are attached for your information (Appendix E). These Rules, other than some minor amendments, have been approved by both the Australian Securities Commission and the Board of ASX Settlement and Transfer Corporation.

Protection of CUFS Holdings

ASTC is a wholly owned subsidiary of ASX, CDN being a wholly owned subsidiary of ASTC. The ASX Group Insurance policy covers all ASX subsidiary companies, which includes CDN, up to an indemnity limit of AUD\$10 million in the aggregate. The policy covers the risks of staff dishonesty

or infidelity, theft of money and securities, forged cheques and securities and electronic and computer fraud.

ASX is a body corporate owned by its broker members. It was incorporated by an act of the Commonwealth Parliament (*Australian Stock Exchange and National Guarantee Fund Act 1987*) which amalgamated the existing six state exchanges.

ASX gains its authority to operate the Stock Exchange in Australia under the Corporations Law 1989. It is specified in this Act that a securities exchange can be established and operated in Australia only with the approval of the Commonwealth Attorney General.

As subsidiaries of ASX, ASTC and CDN are subject at all times to the supervision and regulation of the Australian Securities Commission and the Commonwealth Attorney-General. ASX's powers and areas of operation are set out in its Business and Listing Rules which cannot be altered without the approval of both the ASC and the Attorney General. The SCH Business Rules and any associated activities of SCH and CDN are subject to the same supervision and regulation as applies to ASX.

The National Guarantee Fund provisions of the Corporations Law cover the concept of CUFS as a "marketable security". A holder of CUFS sponsored by a Broker member of ASX is fully covered by the National Guarantee Fund from losses arising from any unauthorised transfer of CUFS by a Broker member.

The risk of CDN becoming insolvent is low and therefore the associated risk of loss by a CUFS holder is low. CDN will merely operate as a receptacle of bare legal title and will not engage in any other activities that may result in financial liability.

Concluding Submission

As a matter of substance, it is clear that the arrangements for CUFS provide a level of investor protection equivalent to the investor protection for CHES itself. The only significant practical difference between a holding of CUFS and a holding of the underlying shares, and a very limited one at that, is that if the law of the home jurisdiction of the foreign issuer allows a matter to be determined at a shareholders' meeting by a show of hands, and the CUFS holder wishes to attend the meeting and vote in that manner, it will be necessary for the CUFS holder to convert the holding into shares in time to do so.

Rule 17f-5 is designed to deal with foreign custody arrangements made by US management investment companies. It is inaccurate to describe the CUFS system as a custodian system. CUFS is mere repository of legal title, and does not provide any custodian services. All investor communications, and all distributions of dividends and other corporate benefits, are handled by the foreign issuer through its Australian company registry. These arrangements are set out clearly in the Business Rules which have the force of law and constitute a statutory contract binding the parties, and are reinforced by individual contracts to which each foreign issuer is a party. The arrangements for CUFS have been carefully reviewed by the Australian Securities Commission and the Attorney-General's Department, as well as the Australian Competition and Consumer Commission as regards competition issues, and have been approved. These arrangements will overcome a significant inefficiency which needs to be addressed.

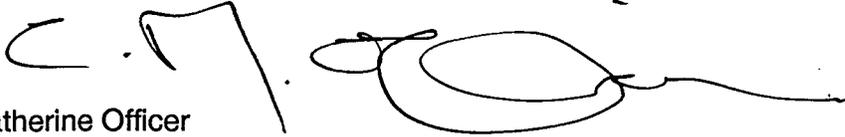
US companies typically hold securities acquired in Australia through Australian custodian nominees. If the investor is registered under the 1940 Act, it will be expected to make arrangements with a custodian nominee which conforms to Rule 17f-5. The policy concerns which underlie the rule (and which are reflected in Release 1C-21259) are addressed by the investor-custodian relationship. These protections are not dislodged by CUFS.

We submit, therefore, that the Commission should respond to our request in a manner which best ensures that US investment management companies are not subject to any impediments in

investing in non-Australian securities in Australia through the use of CUFS. It appears to us that this objective would be achieved by the Commission's staff expressing the view, following the view expressed in April 1994, that a US investment management company which holds CUFS will not thereby violate Section 17(f).

I look forward to your early response. If you have any queries please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Officer', with a large, stylized flourish extending to the right.

Catherine Officer
Corporate Solicitor, ASX Settlement and Transfer Corporation

cc Mr Michael D Mann
Associate Director (International Affairs)
Division of Enforcement



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17 June 1996

Mr John V O'Hanlon
Assistant Chief Counsel
United States Securities and Exchange Commission
Washington DC 20549

Via Facsimile: 0011 1 202 942 9659

Dear Mr O'Hanlon,

Thank you for your timely response to our letter. In relation to the queries raised by you on page 2 of your letter we respond as follows:

1. We assume that your reference to the maintaining of custody of securities by foreign issuers is a reference to the immobilisation of securities in a custodian who then issues depositary receipts on behalf of the foreign issuer. If this is the nature of your query then we advise that foreign issuers who are listed on ASX are able to quote their securities directly on ASX. They therefore do not require a custodian to hold their securities in order for the issue of depositary receipts which are then quoted.

Where a foreign issuer wishes to participate in CHESSE, the securities which are quoted on ASX will be held by CHESSE Depositary Nominees and CHESSE Depositary Nominees will issue CUFSS. In addition, the securities to which the CUFSS are subject, will continue to be quoted notwithstanding the fact that the delivery obligations of the seller of those securities will be discharged upon the delivery of CUFSS instead of the underlying security.

2. The Business Rules which regulate the issue and transfer of CUFSS impose an obligation upon the foreign issuer to maintain a register of CUFSS issued over its shares, on behalf of CHESSE Depositary Nominees. CHESSE Depositary Nominees performs no function other than to hold securities and to perform certain actions in relation to corporate actions and meetings of shareholders.

In addition Business Rule 3A 5.3 (a full copy of the Business Rules was enclosed with our letter of 1 May 1996) imposes an obligation on the foreign issuer to ensure that the number of CUFSS on the CUFSS register always reconciles with the number of shares registered in the name of CHESSE Depositary Nominees on the share register of the foreign issuer. As the foreign issuer is responsible for operating the share register as

well as the CUFS register (on behalf of CHESS Depository Nominees) any mistakes will be mistakes caused by the foreign issuer. The foreign issuer therefore has the obligation to rectify those mistakes. Finally a failure to reconcile the number of CUFS on issue against the number of shares registered in the name of CHESS Depository Nominees would be a breach of our Business Rules.

3. We believe that the reference to "foreign issuers custodian" in point 2 of your letter does not apply in this situation. We would like to discuss this particular aspect in further detail with you.
4. Finally, we do not believe that the obligation for US registered investment companies to maintain custody of domestic securities in the US will detrimentally impact on the operation of our CUFS system. Thank you for advising us of this limitation.

We would like to discuss these matters further with you and suggest that we speak directly with you by telephone conference on Wednesday, June 19, 5 pm your time. We will contact you on the number noted in your letter. Should you have any difficulties in being able to discuss the issues on that date, time or phone number, please do not hesitate to contact us.

Yours faithfully



Michael Dalby
Legal Manager, Settlement