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28 February 2006

Mr Jonathan G Katz  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington DC 20549-9303

*By email: rule-comments@sec.gov*

Dear Sir

**File number S7-12-05**  
**Termination of a Foreign Private Issuer's Registration of a Class of Securities**  
**and Duty to File Reports**

**General Comments**

We are pleased to have the opportunity to provide our comments on the proposals of the Securities and Exchange Commission ("SEC") to amend the rules allowing foreign private issuers to:

1. terminate the registration of a class of equity securities under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act") and cease reporting obligations stemming from such registration; and
2. cease its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Exchange Act.

We strongly support the initiative of the SEC to introduce new rules to make it easier for foreign private issuers to exit the Exchange Act registration and reporting regime. Whilst we support the SEC's initiative, we have some concerns regarding the SEC's proposal, in particular in relation to the scope and application of the dormancy test.

We have responded below to certain matters that the SEC requested specific comment on in its Release No. 1295 ("Release"). We have followed the numbering used in the Release.

## **1. Purpose and scope of proposed Rule 12h-6**

### *Termination of reporting obligations with respect to equity securities*

We agree with the SEC's proposal to permit a foreign private issuer to terminate, rather than merely suspend, its reporting obligations under the Exchange Act. The SEC's proposed requirement that after terminating its registration with respect to equity securities a foreign private issuer must provide material home country documents in English on its Internet Web site (or through an electronic information delivery system that is generally available in its primary trading market) should alleviate concerns about the impact of deregistration on existing U.S. holders.

### *Termination of reporting obligations with respect to debt securities*

We also agree with the SEC's proposal to permit a foreign company to terminate, rather than merely suspend, its section 15(d) reporting obligations with respect to a class of debt securities.

### *Triggering renewed Exchange Act reporting obligations*

We do not believe the SEC should establish a trigger for renewed Exchange Act reporting obligations after a foreign private issuer has completed deregistration. Termination of a foreign private issuer's registration and reporting obligations should have permanent effect and place the foreign private issuer in the same position as a foreign private issuer that had not previously been an SEC registrant.

### *Share sale facility*

Whilst we believe that U.S. shareholders should receive assistance as necessary to dispose of their shares following an issuer's exit from the market, we do not support the proposed requirement that issuers must establish a share-sale facility free of brokerage or other fees. Based on our understanding of the nature of U.S. shareholdings of Australian issuers, most U.S. shareholders opt to hold their equity positions in Australian SEC registrants in the form of local ordinary shares rather than American Depositary Receipts for liquidity reasons and these investors tend to trade these ordinary shares in Australia over the Australian Stock Exchange rather than in the United States. Incorporating an obligation into the new deregistration rules for issuers seeking to deregister to cover brokerage costs is an unnecessary burden on the foreign private issuer as most shareholders already have access to the local market. Such a rule would also unnecessarily encourage these shareholders to exit their equity investment in the foreign private issuer. If the SEC decides to include this requirement, we believe that it should apply only with respect to shareholders that are not "qualified institutional buyers" as defined in Rule 144A under the Securities Act of 1933 (the "Securities Act").

## **2. Conditions for Equity Securities Registrants**

### **a. The Two Year Exchange Act Reporting Condition**

We agree with the SEC's proposal that a foreign private issuer must be an Exchange Act reporting company for a two year period and must have filed or furnished all reports required during that period before it can terminate its reporting obligations regarding a class of equity securities under proposed Rule 12h-6.

### **b. The One Year Dormancy Condition**

We do not agree with the SEC's proposal to incorporate a one year dormancy requirement with respect to all registered and unregistered securities offerings in the U.S. prior to deregistration. If the SEC decides to retain this requirement, we believe that the dormancy requirement should apply only to registered offerings of the class of securities that the foreign private issuer is seeking to deregister. For example, if a foreign private issuer is seeking to deregister its ordinary shares, a registered or unregistered offering of non-convertible debt securities within one year prior to its proposed deregistration date should not preclude the foreign private issuer from deregistering its ordinary shares. Likewise, a private placement of ordinary shares within one year prior to its proposed deregistration date should not preclude the foreign private issuer from deregistering its ordinary shares.

Private placements (under any of Rule 144A, Regulation D or Section 4(2) of the Securities Act) for the most part are made to investors who do not require, have no contractual or other legal right to and have no expectation of continued SEC reporting by the issuer. In fact, the papers documenting these transactions typically contain provisions that expressly contemplate circumstances where the issuer is no longer subject to SEC reporting requirements and address the provision of information from the local market in that instance. By extending the dormancy requirement to unregistered offerings, the new rules would impose unnecessary difficulty on foreign private issuers seeking to transition to unregistered status by preventing these issuers from accessing the U.S. institutional markets for capital raising in a way that non-reporting foreign private issuers are not similarly restricted. In addition, we believe this proposal would have the unintended consequence of preventing U.S. institutional investors from participating in capital raisings by foreign private issuers seeking to deregister where these U.S. institutional investors do not have a need or desire for continued SEC reporting by such foreign private issuers. Accordingly, we strongly believe that any dormancy requirement in the new rules should apply only to registered offerings of the class of securities the foreign private issuer is seeking to deregister.

### **c. The Home Country Listing Condition**

We are generally supportive of the SEC's proposed requirement that a foreign private issuer must have maintained a listing of the subject class of equity securities on an exchange in its home country for the last 2 years to be eligible for deregistration.

We request clarification from the SEC on the application of the home country listing condition to American Depositary Receipts ("ADRs"). Although Telstra's ADRs are not listed on its home exchange, the underlying Telstra shares are. Whilst we

presume that this would satisfy the home country listing condition, it is not entirely clear under the presently proposed rules.

#### **d. Public Float and Trading Volume Benchmarks**

We agree with the SEC's proposal to allow a termination of reporting condition for well-known seasoned issuers that allows for a higher percentage of U.S. resident holders provided a maximum trading volume threshold is not breached. We also agree with the proposed measuring time frame of a recent 12 month period. However, we believe that the percentage of U.S. resident shareholders under this test should be 15% rather than 10%. The 10% threshold presently proposed is too low and would preclude a large number of foreign private issuers from deregistration. Alternatively, the threshold could be based on the percentage of U.S. resident shareholders that are not qualified institutional buyers, which has the desirable result of focussing the test on those investors most in need of the protection of continued SEC reporting.

### **3. Conditions for Debt Securities Registrants**

#### **a. Section 15(d) Reporting Requirement**

We agree with the SEC's proposal to allow foreign private issuers to terminate their section 15(d) reporting obligations regarding a class of debt securities after filing a minimum of one Exchange Act annual report and furnishing all required Form 6-Ks up to the filing of that annual report, provided the issuer has less than 300 U.S. resident holders.

We do not support any proposal that would only permit a foreign private issuer to suspend rather than terminate its section 15(d) reporting obligations.

#### **b. Threshold Record Holder Condition**

We agree with the SEC's proposal to maintain the current threshold of 300 U.S. resident holders of debt securities. We do not support any proposal to impose a threshold based on the dollar amount of the issuer's assets, as this is not relevant to the degree of debt holders' interest in the issuer. Introducing a threshold based on the value of the issuer's assets would also potentially make it more difficult for some foreign private issuers to exit their Exchange Act registration and reporting obligations. This would contradict the SEC's intention, as stated in its Release, to ensure that the new exit rules are no more onerous than the current rules.

### **4. Counting Method**

We agree with the SEC's proposal to restrict its inquiry regarding the number of its U.S. resident holders to: (a) brokers, dealers, banks and other nominees located in the United States, (b) the foreign private issuer's jurisdiction of incorporation, legal organisation or establishment, and (c) the jurisdiction of the foreign issuer's primary trading market if different from the issuer's jurisdiction of incorporation, legal organisation or establishment.

We believe that a foreign private issuer should be able to exclude qualified institutional buyers when determining both the number of its U.S. resident holders and the proportion of its shares held by U.S. residents. Qualified institutional buyers do not require the same level of protection offered by the Exchange Act registration and reporting regime, and therefore they should not be taken into account in the determination of whether an issuer satisfies the threshold tests for deregistration.

We strongly support the SEC's proposal to allow foreign private issuers who have been unable without unreasonable effort to obtain information about the amount of securities held by U.S. holders to assume that the holders are the residents of the jurisdiction in which the nominee has its principal place of business (subject to the requirement that where publicly filed reports of beneficial ownership indicate that securities are held by U.S. residents, those securities must be counted as such).

We also support the SEC's proposal to permit foreign private issuers to rely in good faith on the assistance of an independent information services provider when calculating its public float or the number of U.S. residents who hold its equity or debt securities.

#### **5. Form 15F**

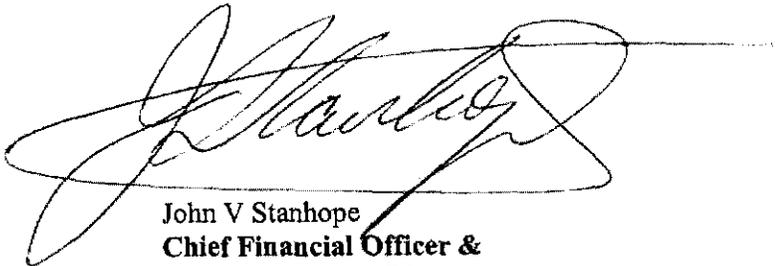
We would propose a waiting period (without SEC action) of 60 days, rather than 90 days, for terminations pursuant to proposed Form 15F to become effective. In our view this would afford the SEC sufficient time to review the Form 15F, and it would also provide investors with sufficient notice of the foreign private issuer's intention to exit registration.

#### **6. Notice requirement**

We generally agree with the SEC's proposal to require foreign private issuers to issue a press release, with broad dissemination to the public in the United States, disclosing their intention to terminate their Exchange Act reporting obligations.

Again we commend the SEC on its proposal to ease the conditions upon which foreign private issuers may exit their Exchange Act registration and reporting obligations. We thank you for the opportunity to comment on the proposed rules. Please contact Douglas Gration on +61(3) 9634 6431 if you need any further explanation of any comments made in this submission.

Yours faithfully



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