



Securities Act (Telstra 3 Share Offer) Exemption Notice 2006

Pursuant to the Securities Act 1978 and to section 48(1)(b) of the Securities Markets Act 1988, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (Telstra 3 Share Offer) Exemption Notice 2006.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 January 2007.

4 Interpretation

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

Act means the Securities Act 1978

amended investment statement means the investment statement and any supplementary disclosure as if those documents taken together were an investment statement for the purposes of the Act and the Regulations

ASIC means the Australian Securities and Investments Commission

Australian prospectus has the meaning given to it in the Securities Act (Australian Issuers) Exemption Notice 2002

Commonwealth means the Commonwealth of Australia

company means Telstra Corporation Limited

instalment receipt means an equity security that—

- (a) acknowledges payment by the holder of part of the purchase price of specified equity securities; and
- (b) entitles the holder to acquire specified equity securities from the trustee on the terms contained in the trust deed

investment statement means the investment statement prepared in accordance with the Act and the Regulations in connection with the Commonwealth's sale of all or part of the specified equity securities

NZX means New Zealand Exchange Limited

Registrar means the Registrar of Companies

Regulations means the Securities Regulations 1983

specified equity securities means fully paid ordinary shares in the capital of the company registered in the name of the Commonwealth on the date on which this notice comes into force

supplementary disclosure means any disclosure made in relation to the investment statement or the amended investment statement after the date of the investment statement and in accordance with this notice

trust deed means the deed entered into, or to be entered into, between the Commonwealth and the trustee that provides for the trustee to hold specified equity securities on separate trusts for each of the subscribers

trustee means Telstra Sale Company Limited or any other person that is a trustee under the trust deed.

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

5 Exemptions for instalment receipts

The company, the Commonwealth, and every person acting on behalf of either or both of them are exempted from sections 33, 37, 37A, and 53 to 54B of the Act and from the Regulations (except regulation 8) in respect of instalment receipts.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the following conditions:

- (a) no offer of instalment receipts is made unless—
- (i) the offer is made in an advertisement that refers to an investment statement relating to the specified equity securities; or
 - (ii) the offer is made in, or accompanied by, an investment statement relating to the specified equity securities; or
 - (iii) the offer is made in, or accompanied by, an Australian prospectus relating to the specified equity securities; and
- (b) the investment statement relating to the specified equity securities—
- (i) refers to a summary of the terms of the trust deed contained in the appendix to the Australian prospectus; and
 - (ii) states that copies of the trust deed may be obtained on request and without charge; and

- (iii) states where copies of the trust deed may be obtained; and
- (c) money or other consideration provided by or on behalf of a subscriber in payment of the first instalment of the purchase price for the specified equity securities is held by or on behalf of the Commonwealth on trust for the subscriber until the specified equity securities to which the subscriber may be entitled are transferred to the trustee and the instalment receipts for those securities are allocated to the subscriber; and
- (d) on the date on which the obligation to issue instalment receipts becomes unconditional the trustee holds, and undertakes in the trust deed that it will during the period for which the receipts remain effective continue to hold, a sufficient number of specified equity securities to meet the obligations of the trustee to deliver the securities to the holders of instalment receipts in accordance with the terms of the receipts; and
- (e) the specified equity securities referred to in paragraph (d) are held by the trustee for the benefit of holders of instalment receipts subject to a security interest securing payment by the holders of the receipts of the final instalments payable for the receipts; and
- (f) NZX has approved any statements in the Australian prospectus or in any advertisement relating to the instalment receipts or specified equity securities that refer to quoting the receipts on a securities market operated by NZX or to any rule of NZX.

7 Exemption from section 37A(1)(b) of Act and Regulations in relation to unforeseen significant events

The company, the Commonwealth, and every person acting on behalf of either or both of them are exempted, in so far as the investment statement is false or misleading in a material particular in relation to any unforeseen significant event that occurs after the date of the investment statement, from—

- (a) section 37A(1)(b) of the Act; and
- (b) the Regulations.

8 Conditions of exemptions in clause 7

The exemptions in clause 7 are subject to the following conditions:

- (a) no allotment of the specified equity securities must be made if, at the time of allotment, the amended investment statement is known by the Commonwealth or the company, or any director of the company, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances (whether or not the amended investment statement became so false or misleading as a result of a change of circumstances) occurring after the later of—
 - (i) the date of the investment statement; or
 - (ii) the date of the last supplementary disclosure to the investment statement made in accordance with this notice; and
- (b) as soon as supplementary disclosure is made in accordance with the requirements of this notice, the Commonwealth and the company must advise NZX of that supplementary disclosure.

9 Further conditions of exemptions in clause 7

(1) The exemptions in clause 7 are subject to the following further conditions:

- (a) the investment statement must include at the front of the “*What are my risks?*” section prominent statements to the following effect:

If any significant developments occur during the course of the offer, the Commonwealth and the company may advise investors of those developments by publishing advertisements in newspapers, and on the website set up for the offer, pursuant to an exemption granted by the Securities Commission under the Securities Act 1978.

If the supplementary disclosure discloses a significant change, or a new matter, that has arisen since the date of the investment statement and that is materially adverse from the point of view of an investor, then in addition to any other rights of withdrawal that an applicant may have, an applicant whose application to purchase instalment receipts is received before midnight New Zealand time on the second business day after the publication of the advertisement (in accordance with the exemption) may withdraw his or her application at any time before 4.00 pm New Zealand time on the date that is 1 month after the publication of the advertisement, by giving written notice of withdrawal to the Commonwealth and be refunded in accordance with the procedure set out in the advertisement.; and

- (b) the Commonwealth or the company must lodge a copy of any supplementary disclosure with the Registrar before making the disclosure; and
- (c) any supplementary disclosure must be in the form, and contain all the matters specified, in the Schedule; and
- (d) either—
 - (i) the investment statement must comply with the Regulations; or
 - (ii) the amended investment statement must comply with the Regulations (except regulation 7A(4)); and
- (e) any investment statement printed but not distributed to any person by the Commonwealth or the company, or by any person acting on behalf of either or both of them, before the issue of any supplementary disclosure must have a copy of the supplementary disclosure published before its distribution appended to it; and
- (f) any Australian prospectus printed but not distributed to any person by the Commonwealth or the company, or by any person acting on behalf of either or both of them, before the issue of any supplementary disclosure must be amended in accordance with the laws of Australia (including any relief granted by ASIC); and

- (g) an exemption allowing the supplementary disclosure statement to be disclosed by way of public advertisement has been granted by the ASIC and remains in force.
- (2) The exemption in clause 7(a) is subject to the further conditions that—
- (a) in addition to any other rights of withdrawal that an applicant may have, an applicant whose application to purchase instalment receipts was received before midnight New Zealand time on the second business day after the date of publication of any supplementary disclosure in accordance with this exemption, may withdraw his or her application at any time before 4.00 pm New Zealand time on the date that is 1 month after the publication of the supplementary disclosure by giving written notice of withdrawal to the Commonwealth; and
 - (b) the Commonwealth must, within 5 business days of receiving notice of withdrawal of an application, dispatch by ordinary mail to the withdrawing applicant, a letter confirming that applicant's withdrawal from the offer and refund to the applicant his or her application money (excluding any interest on such application money) within 10 business days after the earlier of—
 - (i) the last date of dispatch of instalment receipt holding statements to successful applicants in the offer; and
 - (ii) the cancellation of the offer; and
 - (c) the supplementary disclosure must describe the investor's rights and the Commonwealth's obligations under this clause.

10 Exemption from regulation 7A(1) in relation to specified equity securities

The company, the Commonwealth, and every person acting on behalf of either or both of them are exempted from regulation 7A(1) of the Regulations in so far as that provision requires an investment statement relating to specified equity securities to contain information about the Commonwealth as the issuer of the securities.

11 Conditions of exemption in clause 10

The exemption in clause 10 is subject to the conditions that the investment statement contains—

- (a) a description of the effects of the exemption; and
- (b) a prominent statement to the effect that the Commonwealth is deemed to be an issuer of the specified equity securities and has obligations as an issuer under the Act and the Regulations.

12 Exemption from sections 20 and 21 of Securities Markets Act 1988

The trustee and every person acting on its behalf are exempted from sections 20 and 21 of the Securities Markets Act 1988 in respect of any relevant interest in the voting securities of the company that the trustee may have as a result of acting as trustee under the trust deed.

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Schedule
Form of supplementary disclosure

The supplementary disclosure must—

- (a) be prominently published, in at least A4 size, on the same day in the *New Zealand Herald*, the *Dominion Post*, the *Press*, and the *Otago Daily Times*;
- (b) be prominently published on a website established in respect of the offer of the specified securities, and the homepage of the main website of the company must contain a link to that website which prominently states that supplementary disclosure has been made;
- (c) state that it has been issued by the Commonwealth and the company;
- (d) if the supplementary disclosure discloses a significant change, or a new matter, which has arisen since the date of the investment statement and which is likely to have a material adverse effect on the value of the specified equity securities, include—

- (i) a statement to the effect that the significant change or the new matter is likely to have a material adverse effect on the value of the specified equity securities; and
 - (ii) a description of the effect of the adverse event, to the extent that the effect can be assessed, or where the effect of the adverse event cannot be assessed, a statement to that effect; and
 - (iii) a statement quantifying the effects of the event, if they can be quantified or, where the effects of the event cannot be quantified, a statement to that effect; and
- (e) except to the extent required by this notice or the circumstances of the offer in New Zealand, contain substantially the same information as the supplementary disclosure statement concerning the significant event that is published in Australia pursuant to an exemption granted by ASIC.

Dated at Wellington this 3rd day of October 2006.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of notification in the *Gazette* and expires on 31 January 2007, exempts the Commonwealth of Australia and Telstra Corporation Limited (**Telstra**) from various provisions of the Securities Act 1978 (the **Act**), the Securities Markets Act 1988, and the Securities Regulations 1983 (the **Regulations**).

The exemptions allow—

- the Commonwealth of Australia and Telstra to offer instalment receipts to members of the public without—
 - a registered prospectus;
 - an investment statement in relation to the instalment receipts;
 - complying with certain register, audit, and certificate requirements;
 - disclosing certain information to security holders on request or periodically; and
 - having to comply with the Regulations (except regulation 8); and
- the Commonwealth of Australia and Telstra to allot securities under an investment statement that is misleading by reason of not referring to a material adverse event, so long as the Commonwealth of Australia and Telstra have published updated information relating to the material adverse event and its effect on the offer; and
- the Commonwealth of Australia and Telstra to prepare an investment statement in relation to the underlying securities that does not include information about the Commonwealth as an issuer; and
- the instalment receipt trustee to hold the underlying shares for the holders of the instalment receipts without disclosing a substantial security holder interest in those shares.

The Commission considers that the exemptions from sections 33, 37, 37A, and 53 to 54B of the Act and the Regulations (except regulation 8) in respect of the instalment receipts are appropriate for the following reasons:

- while the instalment receipts are technically equity securities as defined in the Act, the performance of these securities is dependent on the performance of the underlying shares. Given this, information in relation to the underlying securities is of more use to potential investors than information in relation to the instalment receipts;
- information regarding the instalment receipts will be included in the investment statement to the extent that it is relevant to the offer of the underlying securities;
- the conditions of exemption require money paid by the holders of instalment receipts to be held on trust until the underlying securities have been transferred to the trustee.

The Commission considers that the exemption from section 37A(1)(b) of the Act and the exemption from the Regulations in relation to the investment statement are appropriate for the following reasons:

- the offer is being made under the Securities Act (Australian Issuers) Exemption Notice 2002. That exemption notice recognises that the primary regulation of an offer made by an Australian issuer in both Australia and New Zealand should be that of Australia. The exemption allowing subsequent events to be notified publicly mirrors relief granted for the offer in Australia, the principal market for the offer. The exemption is consistent with the Commission's policy for such overseas offers:
- due to the large size of the offer, should a significant development arise during the course of the offer it would be impractical and expensive to provide all potential investors with a new investment statement:
- the conditions of the exemptions require Telstra and the Commonwealth to assess whether a materially adverse event can be corrected by the supplementary disclosure or whether the offer should be withdrawn in its entirety.

The Commission considers that the exemption from regulation 7A(1) of the Regulations, to the extent that it requires the investment statement to contain information about the Commonwealth as an issuer, is appropriate for the following reasons:

- when Part 2 of the Act applies to an offer of previously allotted securities to the public, both the person offering the securities and the original allotter of the securities have a responsibility for the offer as issuers:
- information relating to the Commonwealth as an issuer is unlikely to be useful to potential investors in considering whether to subscribe for shares in Telstra, and may be confusing:
- the conditions of exemption require potential investors to be advised that the Commonwealth remains legally responsible as an issuer.

The Commission considers that the exemptions from sections 20 and 21 of the Securities Markets Act 1988 are appropriate for the following reasons:

- the exemptions are limited to those substantial security holdings that the trustee has as a result of holding the underlying shares for the benefit of the instalment receipt holders:
 - the instalment receipt holders, as beneficial owners of the Telstra shares, will still have disclosure obligations under these provisions. Given this, disclosure by the trustee would be of little use to the market.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 5 October 2006.

This notice is administered by the Securities Commission.
