

Future Fund Ministerial Direction 2007

I, NICHOLAS HUGH MINCHIN, Minister for Finance and Administration, give the following direction under subclause 8(1) of Schedule 1 to the *Future Fund Act 2006*.

Dated: 28 Feb 2007



NICK MINCHIN

Minister for Finance and Administration

1 Definitions

For the purposes of this direction:

ASX means the Australian Stock Exchange Limited;

Board means the Future Fund Board of Guardians;

Dispose of a Telstra Share means:

- (a) sell, transfer, create a trust over or interest (including any legal, beneficial or relevant interest (as defined in the *Corporations Act 2001*)) in, or alienate any right or power attached to, a Telstra Share or create, issue or sell a financial product convertible into, exchangeable for or representing the right to receive a Telstra Share; or
- (b) agree or undertake to do any of the foregoing, whether conditionally or unconditionally; or
- (c) do anything having the economic effect of any of the foregoing including entering into a derivative (as defined in the *Corporations Act 2001*) over Telstra Shares;

Telstra means Telstra Corporation Limited;

Telstra 3 Instalment Receipts means instalment receipts that:

- a) relate to ordinary shares in Telstra; and
- b) are issued in connection with the Telstra 3 Share Offer.

Telstra 3 Share Offer means the offer by the Commonwealth of ordinary shares in Telstra to retail and institutional investors, through an offer of instalment receipts relating to those shares (Telstra 3 Instalment Receipts) made in October and November 2006; and

Telstra Shares means ordinary shares in Telstra that are transferred to the Future Fund by the Commonwealth Government after the closure of the Telstra 3 Share Offer.

2 Ministerial direction

2.1 Disposal of Telstra Shares

Subject to paragraph 2.2 below, the Board must not Dispose of any Telstra Shares during the period from and including the date Telstra 3 Instalment Receipts are first listed on ASX to and including the date 2 years after that date (the "**Lock-up Period**").

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2.2 Exceptions

At any time during the Lock-up Period, the Board may Dispose of Telstra Shares:

- (a) only if requested by Telstra and agreed by the Board, as part of any Telstra initiated dividend reinvestment plan or share top-up plan; and
- (b) only if requested by Telstra and agreed by the Board, as part of any Telstra initiated capital management initiative, such as a buy-back or capital reduction (whether selective or based on equal access or of any other nature – for the avoidance of doubt, if any such initiative is based on equal access, Telstra will be taken to have requested the Board's participation); and
- (c) to a single investor, provided that:
 - (A) the parcel of Telstra Shares to which the Disposal relates is greater than 3% of Telstra's issued ordinary shares at the time of the Disposal; and
 - (B) the investor provides an enforceable undertaking on terms acceptable to the Board and the Commonwealth to be bound by similar lock-up provisions to those contained in this direction for at least the balance of the Lock-up Period (except that the undertaking will not contain an exception equivalent to this clause 2.2(c) but may contain an exception for a Disposal as a result of a bona fide exercise of security by financiers to the investor); and
 - (C) Telstra is advised prior to such Disposal; and
 - (D) the price per Telstra Share is no less than the Telstra 3 Share Offer institutional offer price; and
 - (E) the date of the disposal is at least six months following the initial listing of Telstra 3 Instalment Receipts on the ASX.

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Finance and Administration

Future Fund Act 2006

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Context

The Government announced on 25 August 2006 that it would undertake a public Telstra share offer in October and November 2006 with shares not transferred to investors as part of the public share offer to be transferred to the Future Fund. In the Telstra 3 Share Offer the Government transferred 4.341 billion shares in Telstra Corporation Limited (**Telstra**), effectively reducing its holdings from 6.446 billion shares to 2.105 billion of the issued shares in Telstra. The proceeds of the sale and the Government's remaining stake in Telstra will be transferred to the Future Fund (**Fund**) as part of the Government's aim of strengthening its long-term financial position by making provision for its unfunded superannuation liabilities.

As part of the preparations for the Telstra 3 Share Offer, the Government obtained advice from its financial advisers and consulted the Fund and Telstra as to the terms on which the Fund should hold transferred Telstra shares. The Government set out its intentions on such terms in the prospectus prepared for the Telstra 3 Share Offer. This direction implements the Government's stated intentions.

The Government intends to transfer its remaining stake in Telstra under subclause 6(1) of Schedule 1 to the *Future Fund Act 2006* (Cth) (**Act**). Subclause 8(1) of Schedule 1 to the Act provides that the nominated Minister may give the Future Fund Board of Guardians (**Board**) written directions about financial assets transferred under subclauses 6(1) or 7(1) of that schedule. In particular, subclause 8(2)(a) provides that the nominated Minister may require the Board not to realise the financial assets before the end of a specified period.

Objective of the direction

In announcing the decision to transfer its remaining Telstra shares to the Fund the Government stated that the shares would be subject to an escrow period of around 24 months, with the Fund free to sell down its shareholding as it sees fit following that period. The objective of this direction is to give effect to that decision and specify the limited range of circumstances which are excluded from that escrow period. In setting this direction, the Government has had regard to the objectives of the Fund set out in the Act and representations made to investors in the Telstra 3 Share Offer.

In the light of these considerations, and having consulted the Fund and Telstra, the Government decided to:

- impose a restriction on the realisation of transferred Telstra shares for a limited period by reference to the date Telstra 3 Instalment Receipts are first listed on the Australian Stock Exchange (**ASX**) (Telstra shares sold in the Telstra 3 Share Offer were sold under an instalment receipt structure);
- provide exceptions to the general restriction to allow the Fund's participation in certain capital management or other initiatives by Telstra; and

- provide an exception for a realisation to a single investor where the realisation is of a sizable stake in Telstra and where certain other criteria are satisfied.

General restriction

The direction provides that in general the Board must not dispose of any transferred Telstra shares for a two year period from and including the date Telstra 3 Instalment Receipts are first listed on the ASX (that is until 20 November 2008) (**Lock-up period**).

The prohibition has been drafted broadly so that in addition to restricting the Board from selling or transferring Telstra shares, the Board is also restricted from doing other things such as creating a trust over or other interest in any transferred Telstra shares, alienating a right or power attached to any transferred Telstra shares or doing anything having such an economic effect including entering into a derivative over any transferred Telstra shares.

Exceptions

This prohibition is subject to exceptions.

With the first two exceptions, these exceptions will not apply unless Telstra requests the Fund's participation. With the third exception, Telstra need only be informed prior to the disposal.

Dividend Reinvestment Plan

The Board may dispose of shares if requested by Telstra and agreed by the Board, as part of any dividend reinvestment plan or share top-up plan.

Capital Management

The Board may dispose of shares if requested by Telstra and agreed by the Board, as part of any Telstra initiated capital management initiative, including a buy-back or other means of capital reduction. The buy-back may be selective or based on equal access.

Disposal to a Cornerstone Investor

The Board may dispose of shares to a single "cornerstone" investor provided that certain considerations are satisfied:

- the parcel of Telstra shares to which the disposal relates must be greater than 3% of Telstra's issued ordinary shares at the time of the disposal;
- the investor provides an enforceable undertaking on terms that are acceptable to the Board and the Commonwealth, to be bound by similar lock-up provisions for at least the balance of the Lock-up period;
- Telstra must be advised prior to such a disposal;
- the disposal must be at a price no less than the Telstra 3 Share Offer institutional offer price for Telstra shares; and
- the date of the disposal is at least six months following the initial listing of Telstra 3 Instalment Receipts on the ASX.

The cornerstone investor is to be bound by similar lock-up provisions for at least the balance of the Lock-up period thus ensuring that the restrictions over this significant 17% stake are in place for the whole two year period.

Telstra must be informed of the disposal, as a disposal of 3% of Telstra's issued ordinary shares, while significant, does not of itself trigger an obligation to lodge a substantial holding notice.

The minimum price requirement contributes to the aim of ensuring that any disposal to investors who purchase under this exception to the Escrow do not gain a more favourable price than investors in the Telstra 3 Share Offer.

The provision that the exception does not apply for the first six months of the initial listing of Telstra 3 Instalment Receipts gives greater certainty to the market for a six month transition period following the settlement of the Telstra 3 Share Offer.