

PUBLIC

SEP 26 1995

RESPONSE OF THE OFFICE OF
INVESTMENT COMPANY REGULATION
DIVISION OF INVESTMENT MANAGEMENT

Our Ref. No. 95-06-ICR
Queensland Treasury
Corporation
(File No. 812-6290)

By letter dated September 22, 1995, you request assurance that the staff will not recommend enforcement action under the Investment Company Act of 1940 (the "1940 Act") to the Commission if Queensland Treasury Corporation ("QTC") proceeds with the transaction described in your letter (the "Stanwell Transaction"). In 1986, the Commission granted an order exempting QTC from all provisions of the 1940 Act to enable QTC, the central financing authority for the State of Queensland ("Queensland"), to issue and sell debt securities in the United States (the "Order"). 1/ QTC and Queensland agreed in the application for the Order that Queensland would guarantee QTC's debt securities offerings made in the United States. You state in your letter, however, that QTC, rather than Queensland, will unconditionally guarantee the lease obligations ("Obligations") that support the debt securities to be issued and sold in the United States in the Stanwell Transaction.

Without necessarily agreeing with your legal analysis, we would not recommend enforcement action to the Commission under the 1940 Act if QTC proceeds with the Stanwell Transaction without Queensland's guarantee. Our position is based on the unique facts and circumstances described in your letter, particularly that: (1) any offering in the United States will be a private placement pursuant to section 4(2) of the Securities Act of 1933 (the "1933 Act"); (2) all United States investors will be institutional "accredited investors" within the meaning of rule 501(a) of Regulation D under the 1933 Act; (3) only a total of approximately 15 institutional investors are expected to acquire Obligations and the average investment will be approximately U.S. \$10 million; (4) each investor will be fully informed of the terms of the Order and Queensland will not directly guarantee the Obligations; (5) QTC either will comply with all the terms of the Order in future offerings of its debt securities, obtain an amended Order, or determine that another exclusion or exemption from the 1940 Act is available; and (6) the difficulty of getting a Queensland guarantee under the facts and circumstances of the Stanwell Transaction.

Our response expresses the Division's position on enforcement action only, and does not purport to express any legal conclusions on the questions presented. Our position is

1/ The Queensland Government Development Authority (subsequently renamed Queensland Treasury Corporation), Investment Company Act Release Nos. 15129 (June 4, 1986) (notice) and 15177 (June 27, 1986) (order).

based upon the specific facts and representations in your letter,
and different facts or circumstances might require a different
conclusion.

H.R. Hallock, Jr.

H.R. Hallock, Jr.
Special Counsel
September 26, 1995

ALTERNATIVE
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Office of Investment Company Regulation
Division of Investment Management

September 22, 1995

By Facsimile and Hand

Houghton R. Hallock, Jr., Esq.
Special Counsel
Office of Investment Company Regulation
Division of Investment Management
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

ACT ICA
SECTION 6(c)
RULE _____
PUBLIC _____
AVAILABILITY 9/26/95

Subject: Queensland Treasury Corporation

Dear Mr. Hallock:

On behalf of Queensland Treasury Corporation ("QTC"), we request the staff's assurance that it will not recommend enforcement action under the Investment Company Act of 1940 ("Investment Company Act") to the Securities and Exchange Commission ("SEC") if QTC proceeds with the transaction described below ("Stanwell Transaction"). In 1986, QTC obtained an order of exemption ("Order") from all provisions of the Investment Company Act.^{1/} The Order was obtained to allow QTC, the central financing and liability management authority for the State of Queensland ("Queensland"), to issue and sell debt securities in the United States. In connection with obtaining that Order, QTC and Queensland agreed that Queensland would guarantee QTC's debt securities offerings made in the United States. In the Stanwell Transaction described below, QTC, rather than Queensland directly, will unconditionally guarantee the lease obligations that support the debt securities. On the basis of the unique facts and circumstances described below, particularly that the

1/ In the Matter of The Queensland Government Development Authority, Investment Company Act Release Nos. 15129 (June 4, 1986) (notice) and 15177 (June 27, 1986) (order). The powers of The Queensland Government Development Authority were expanded in 1988 and its name was changed to Queensland Treasury Corporation by the Queensland Treasury Corporation Act 1988 ("1988 Act").

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interests to be issued and sold in the United States will be sold exclusively to accredited investors pursuant to a non-public offering in the United States, QTC requests the staff's assurance that it will not recommend enforcement action under the Investment Company Act if QTC proceeds with the Stanwell Transaction without Queensland's direct guarantee.

Description of QTC and Order

QTC, under its previous name, was established under the laws of the State of Queensland, Commonwealth of Australia on September 1, 1982 pursuant to the Statutory Bodies Financial Arrangements Act 1982-84. It was established to act as the central borrowing authority of Queensland, raising funds for on-lending to Queensland governmental bodies. QTC follows a number of statutory objectives, including (1) acting as a financial institution for the benefit of and the provision of financial resources and services to statutory bodies in Queensland, and (2) entering into and performing financial and other arrangements that advance the financial interests and development of Queensland. The 1988 Act vests QTC with the authority, among others,

- to borrow, raise or otherwise obtain financial accommodations in Australia or elsewhere,
- to act as a central borrowing and capital raising authority for Queensland and its statutory bodies,
- to act as an agent for statutory bodies in negotiating, entering into and performing financial arrangements, and
- to provide a medium for the investment of Queensland funds.

Although its status as an investment company was not completely clear, in 1986 QTC (under its predecessor name) applied for and obtained exemptive relief from the provisions of the Investment Company Act. The main arguments made in the application seeking the relief were that QTC was an agent of a sovereign government and that it should be viewed as a conduit for that government in connection with its financing activities. QTC agreed to certain conditions to obtain this relief, including the condition that the government of Queensland would unconditionally guarantee debt securities issued by QTC in the United States. Compliance with this condition is at issue in the Stanwell Transaction, described below.

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Proposed Transaction

QTC proposes to enter into a sale and leaseback type of financing involving three electrical generating units (each, a "Unit") comprising part of the Stanwell Power Station, located in the State of Queensland. An undivided interest in each Unit will be transferred under a hire purchase arrangement to a number of trusts (each a "Trust") which will finance the purchase by issuing two series of Notes equal to approximately 87% of the cost of the Unit and by an equity contribution from the grantor of the Trust of the balance of the cost. One series of the Notes will be issued to a special purpose Pass Through Trust, which will issue back to back Pass Through Certificates to a small number of institutional investors (expected to be approximately 15 in total) in a private placement pursuant to Section 4(2) of the Securities Act of 1933 (the "1933 Act"). Each United States investor will be an "accredited investor" within the meaning of Regulation D under the 1933 Act. Although the precise amount is not certain, QTC expects that the average investment made by the institutional investors will be approximately \$10 million.

Upon the hire purchase of the Unit by the applicable Trust, the following transactions will occur:

1. QTC will lease each undivided interest from the relevant Trust and will immediately assign its lease rights and obligations to a special purpose Cayman Islands company (the "Cayman Lessee");
2. The Cayman Lessee will assign the lease rights (but not the obligations) back to QTC;
3. QTC will sublease to Queensland Generation Corporation (trading as AUSTA Electric), a statutory corporation constituted pursuant to the Government Owned Corporations Act; and
4. QTC will unconditionally guarantee the obligations of the Cayman Lessee under the lease.

The Notes will be secured by a lien on the applicable undivided interest, by assignments of the lease to the Cayman Lessee and by QTC's guarantee of the lease.

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Discussion

Under Section 2(4) of the 1933 Act, an issuer is defined in the context of equipment-trust certificates or like securities as the person by whom the equipment or property is or is to be used. QTC has the ability to use each Unit itself, or lease each Unit to others, such as AUSTA Electric. Consequently, QTC comes within this definition and is therefore deemed to be the issuer under the 1933 Act of the lease obligations ("Obligations"), including the rent that will be applied to service the Notes.

It did not become apparent until the end of last week that QTC's rights and activities in the Stanwell Transaction that result in it becoming an issuer under the 1933 Act could lead to issuer status under the Investment Company Act. Under Section 2(a)(22) of the Investment Company Act, an issuer is broadly defined as "every person who issues or proposes to issue any security, or has outstanding any security which it has issued." Consequently, because QTC could be viewed as issuing securities under the Investment Company Act, the conditions imposed by the Order would become operative. QTC will comply with all of the conditions imposed in the Order except that it has not obtained an official Queensland guarantee of the Obligations. As such, without a Queensland guarantee, it could be argued that QTC is not complying with all of the terms of the Order. However, on either of the following two alternative grounds, we request that relief be granted.

First, QTC believes that its guarantee of the Obligations is virtually the same as a direct Queensland guarantee. Section 7 of the 1988 Act confers on QTC the status of a representative of the Crown. In fact, Section 7 of the 1988 Act explicitly states that QTC "represents the Crown and, subject to this [1988] Act, has and may exercise and claim all the powers, privileges, rights and remedies of the Crown." In addition, under the Crown Proceedings Act 1980 of Queensland, procedures exist for the satisfaction of judgments against QTC out of the revenues and certain assets of Queensland. By virtue of this status, QTC believes that its obligations are also those of Queensland. While the guarantee may be said to be indirect through an agent, any guarantee provided by QTC would be in essence and economic reality made by Queensland.

Alternatively, we request that relief be granted on the particular facts presented in this circumstance, including that (1) any offering in the United States will be non-public pursuant to Section 4(2) of the 1933 Act; (2) all United States investors will be accredited investors within the meaning of Rule 501(a) of

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Regulation D under the 1933 Act; (3) only a total of approximately 15 accredited investors are expected to acquire Obligations and the average investment will be approximately \$10 million; and (4) each such accredited investor will be fully informed of the terms of the Order and that Queensland will not directly guarantee the Obligations.

We understand that, if relief is granted on either grounds, such relief will apply exclusively to the Stanwell Transaction. Should QTC offer debt securities in the future, it will comply with all of the terms of the Order, seek and obtain an amendment to the Order or determine that it is entitled to rely on another exclusion or exemption from the Investment Company Act.

Our request on QTC's behalf is of an emergency nature. For tax reasons, the Stanwell Transaction must close before October 1, the beginning of the last fiscal quarter for many prospective investors. Indeed, each of the investors that has made a commitment to participate in the Stanwell Transaction has conditioned that commitment on the transaction closing no later than September 30, 1995. This condition has been imposed in recognition of the "mid-quarter convention" problem presented by the "40 percent" rule of applicable depreciation rules under the Internal Revenue Code.^{2/}

The investments in the Stanwell Power Station are very significant in size and could, if made during the last three months of the year, invoke the mid-quarter convention for the investor. Should this happen, its interest in Stanwell would be subject to substantially less depreciation in 1995 than if placed

^{2/} Under the general rule of I.R.C. Section 168(d), property placed in service by a taxpayer at any time during the taxable year is depreciated in accordance with the "half-year convention," under which all such property is deemed placed in service on the mid-point of that taxable year (i.e., July 1 for a calendar year taxpayer). Thus, a half-year's depreciation can be allowed even for property placed in service very late in that year. This general rule is subject to an exception imposed by I.R.C. Section 168(d)(3), which provides that, if more than 40 percent of the property placed in service by a taxpayer during the taxable year is placed in service during the last three months of that year, then each property must be depreciated in accordance with the "mid-quarter convention," pursuant to which such property is deemed placed in service on the mid-point of the quarter in which it is actually placed in service.

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in service before October 1. Even more significantly, such a post-September 30 investment would probably adversely affect the 1995 depreciation deductions available for all of the property placed in service by the investor and its affiliates during 1995 by causing all such property to be depreciated under the mid-quarter convention, rather than the half-year convention.

In short, the Stanwell Transaction, now scheduled to close on Wednesday, September 27, will probably not close unless we receive the staff's response, at the latest, by close of business on September 26, 1995. The only alternative to going forward on the basis of the staff's favorable response would be if QTC were able to obtain a Queensland guarantee, a very difficult if not impossible alternative at this late date. Specifically, in order to obtain the government guarantee, the Treasurer of Queensland must execute the guarantee with the approval of the Governor General of Queensland acting with the consent of the Queensland government executive council. The Executive Council normally meets every Thursday but a matter could only be placed on the meeting agenda with two weeks notice. Given that this concern with the Investment Company Act only arose approximately one week ago, there was not enough time to get the matter placed on the agenda. Furthermore, the Executive Council meeting for next week (September 28, 1995) falls after the closing date and in any event, we have been informed that the regular Thursday meeting was cancelled for that date.

Accordingly, we request that the staff consider this request as soon as possible and, hopefully, issue a favorable response by September 26. I apologize for the inconvenience created by such a short time frame and very much appreciate the staff's attention to this request. Should you have any questions or comments, please contact me, Michael Thoyer at 212-309-6200 or, for tax issues, William Macan at 212-309-6290.

Sincerely,

Stephanie M. Monaco

Stephanie M. Monaco

cc: Elizabeth G. Osterman, Esq.
C. David Messman, Esq.
Michael Thoyer, Esq.
William Macan, Esq.
John Angus
Jon Grayson