



HENRY DAVIS YORK
LAWYERS

30 November 2009

Our Ref NZB/JAI/AUB/3121459

BY EMAIL applications@asic.gov.au
PRIVILEGED & CONFIDENTIAL
The Manager
Applications & Advice
Financial Services, Regulation
Australian Securities & Investment Commission

COPY BY EMAIL: ian.domecillo@asic.gov.au

S3400109
Pm 209/33270

REC'D: 30.11.09
FORM No: FS10C
PRESCRIBED FEE:
\$270 PD
AUST SEC. COMM. H

Dear Sir/Madam

NREG: 140885669

**Application for relief for wholesale foreign financial services provider
Itaú Unibanco S.A.**

1 EXECUTIVE SUMMARY

We act for Itaú Unibanco S.A. (**Itaú**), which is the new corporate name of Banco Itaú S.A. (as approved by the general shareholders meeting held on 30 April 2009, under approval by the Brazilian Central Bank), an entity regulated by the Securities and Exchange Commission of Brazil (**CVM**). Itaú is a wholly owned subsidiary of Itaú Unibanco Holding S.A. (**Itaú Holding**), the largest provider of financial services in Brazil.

Itaú wishes to apply for an exemption from the requirement to hold an Australian financial services licence on the basis that it:

- (a) is a foreign financial services provider regulated by an overseas regulatory authority under a regulatory regime which is sufficiently equivalent to the Australian regulatory regime; and
- (b) intends to provide financial services only to wholesale clients in Australia.

2 WHAT TYPE OF RELIEF APPLICATION IS THIS?

We consider that this application is standard as it is made in accordance with published ASIC policy as set out in Regulatory Guide 176 *Licensing: Discretionary powers - wholesale foreign financial services providers (RG 176)*.

3 WHAT IS THE LEGAL BASIS OF THE APPLICATION?

- 3.1 Itaú is seeking an exemption under section 911A(2)(I) of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 3.2 A draft relief instrument is enclosed which has been based on ASIC Class Order [03/1099] *UK FSA regulated financial service providers*, with minor modifications to refer to the local Brazilian regulation.

4 REGULATORY ISSUE OR PROBLEM

4.1 Background facts

(a) Itaú Holding and Itaú

Itaú Holding is one of the largest financial institutions in Latin America and the largest provider of financial services in Brazil with more than 56 million clients. Based in São Paulo Brazil, Itaú Holding also has overseas operations in Argentina, Uruguay, Chile, Cayman Islands, USA, UK, Portugal, Luxembourg, Dubai, Hong Kong and Japan. Itaú is a wholly owned subsidiary of Itaú Holding.

Itaú Holding is a publicly-held company which, through its subsidiary and affiliated companies provides banking and investment management services to institutional and retail clients. Itaú's principal commercial activities include retail banking services, portfolio and investment management, pensions, consumer credit, real estate loan finance and investment credit, lease portfolio management and foreign exchange trading.

Further information regarding Itaú Holding and Itaú is set out in the attached schedule and is also available on the website www.itaubr.com.

(b) Itaú Latin America Equity Fund

Itaú Holding intends to embark on further international expansion and as one aspect of this endeavour proposes to provide its investment management expertise, through its subsidiary Itaú, to the Australian market. Specifically, Itaú proposes to be appointed as investment manager for a registered managed investment scheme focussed on Latin American listed securities, the Itaú Latin America Equity Fund (**Fund**).

The Fund is to be established as a registered managed investment scheme with Equity Trustees Limited ABN 46 004 031 298 (**EQT**) as responsible entity. EQT holds an Australian financial services licence on the basis of which the Fund would be operated (AFSL No. 240975). EQT has formed alliances with external specialist investment managers such as is proposed with Itaú. EQT currently acts as responsible entity for both registered and unregistered managed investment schemes covering all major asset sectors including Australian and international shares, property trusts, fixed interest and cash. RBC Dexia is to be appointed as the administrator of the Fund and PricewaterhouseCoopers is to be appointed as the auditor.

The Fund's investment objective will be to provide investors with exposure to Latin American listed securities, leveraging off the management expertise and experience of Itaú, one of the leading investment managers in that asset class. One aspect of the offering is that it would potentially provide investors in Australia with an opportunity to gain access to an asset class which to date has not been widely available in this form of investment. It is initially intended that investments in the Fund would be offered to institutional wholesale investors only, although in due course that offering is proposed to include platforms and other pooled administration services, thereby allowing retail investors access to the Fund.

In connection with its investment management responsibilities, Itaú also proposes that its representatives from its portfolio management team would visit Australia on an occasional basis for the purposes of undertaking promotional activities, including presentations and meetings with institutional investors. These visits would entail Itaú providing general advice to wholesale clients.

4.2 Regulatory Issue

(a) Commercial aspect

The investment management of the Fund will be conducted by the Itaú team based in Brazil (Itaú AM). Itaú AM comprises 120 portfolio managers, analysts, economists and traders and is one of the largest teams in the Brazilian market. As mentioned above, members of the portfolio management team will visit the Australian investors from time to time for the purposes of undertaking promotional activities, including presentations and meetings.

Since the investment management activities will be performed outside Australia and the Fund will be operated by an independent responsible entity based in Australia under the terms of its AFS licence, Itaú does not intend to apply for an Australian financial services licence itself. In addition, Itaú does not have any intention to establish a permanent place of business in Australia.

(b) Legal or technical aspect

Itaú intends to deal in securities and provide general financial product advice in connection with performing its role as investment manager and delegated agent of the responsible entity for the Fund.

Itaú also proposes to provide general advice through its representatives which will visit Australia on an occasional basis for the purposes of undertaking promotional activities, including presentations and meetings with institutional investors.

The financial services which Itaú provides will be to wholesale clients only.

In order to be able to deal in financial products on behalf of the Fund and provide general advice to EQT as responsible entity of the Fund as well as to wholesale clients, Itaú requires relief from the requirement to hold an

Australian financial services licence. Itaú consequently seeks individual relief on an equivalent basis to the class order relief which ASIC has already granted to foreign financial service providers regulated in the UK, US, Hong Kong and Singapore.

(c) **Policy or regulatory aspect**

It is submitted that granting this relief would be consistent with ASIC's principles concerning equivalency of cross-border regulation as set out in ASIC Regulatory Guide 54: *Principles for cross border financial services regulation*.

Itaú is regulated by the Securities and Exchange Commission of Brazil (CVM website: www.cvm.gov.br) which is the federal authority responsible for investment management regulation in Brazil. In addition, as a result of Itaú being a financial institution, it is also regulated by Central Bank of Brazil (BACEN website: www.bcb.gov.br).

The combined regulatory regime of the CVM and BACEN provide a regulatory framework within which investor protection, market integrity and the reduction of systemic risk are addressed in a variety of ways. In particular, the Brazilian Securities Law No. 6.385/76 establishes that the CVM follows objectives including the assurance of the proper functioning of exchange and over-the-counter markets, the protection all securities holders against fraudulent issues and illegal actions performed by company managers, controlling shareholders, or mutual fund managers and support of public access to all relevant information about securities traded and the companies which have issued them.

BACEN is responsible for controlling and supervising financial institutions and its approval is required before any such institution may be established. BACEN also requires that financial institutions act fairly, honestly, and competently in their provision of financial services to clients, under penalty of sanctions (being BACEN is empowered to impose restrictions and penalties on financial institutions, and even cancel their banking authorization).

Further information on the regulatory responsibilities and powers of the CVM and BACEN is set out in the attached schedule (marked 'Attachment A').

5 WHY ITAÚ CANNOT COMPLY WITH THE ACT?

- 5.1 This application does not extend the operation of the Corporations Act or ASIC's policy settings.
- 5.2 We are not aware of ASIC having previously provided specific relief for foreign financial service providers regulated by CVM. However, it is submitted that in light of the equivalency of the regulation in Brazil the relief sought by this application does not go substantively beyond principles underlying existing relief provided for foreign financial services providers.

5.3 Equivalent relief to that sought in this application is currently provided in the form of the following Class Orders:

- (a) [03/1099] *UK FSA regulated financial service providers*;
- (b) [03/1100] *US SEC regulated financial service providers*;
- (c) [03/1102] *Singapore MAS regulated financial service providers*; and
- (d) [03/1103] *Hong Kong SFC regulated financial service providers*.

5.4 We also note:

- (a) class order [04/1313] *Germany BaFin regulated financial service providers* by which similar relief (based on the holding of a German banking licence) has been provided to that sought in this application; and
- (b) the individual relief granted to a Guernsey-based operator of a foreign collective investment scheme, as noted in ASIC's Report 81 - *Overview of decisions on relief applications* (April to June 2006).

6 ARGUMENTS IN SUPPORT OF THE APPLICATION

We believe the relief sought in this application should be granted for the following reasons:

- 6.1 The financial services to be provided in Australia will be provided to wholesale clients only.
- 6.2 Itaú is regulated by the CVM as well as the BACEN (see above paragraph 4.2(c)).
- 6.3 CVM is a signatory of the IOSCO Multilateral Memorandum of Understanding.
- 6.4 In terms of the regulation of the broader Itaú group's issued securities, Itaú Holding's shares are traded on (i) New York Stock Exchange through its Level II ADR program, which requires that the company comply with the U.S. SEC standards, and (ii) Merval (Argentina) through Cedears, subject to the Comisión Nacional de Valores standards.
- 6.5 As illustrated in the responses set out in the attached schedule to this application (marked 'Attachment A'), regulation by the CVM and BACEN is sufficiently equivalent to regulation by ASIC on the basis that the CVM and BACEN regulatory regime is:
 - (a) clear, transparent and certain;
 - (b) consistent with IOSCO Objectives and Principles of Securities Regulation;
 - (c) adequately enforced; and
 - (d) achieves sufficiently equivalent outcomes as the Australian regime achieves for the regulation of wholesale financial services.

- 6.6 There are effective co-operation arrangements between CVM and ASIC. These arrangements are described in the Memorandum of Understanding between ASIC and CVM.
- 6.7 Itaú would meet all the requirements of the relevant exemption by:
- (a) providing financial services in Australia only to wholesale clients;
 - (b) complying with the requirements of CVM's regulatory regime when providing those services in Australia;
 - (c) maintaining its authorisation under CVM's regulatory regime;
 - (d) the CVM regulatory regime being sufficiently equivalent to ASIC's regime;
 - (e) agreeing to notify ASIC of each significant change to the financial services authorisations as they apply to the financial services provided in Australia;
 - (f) disclosing in all relevant disclosure material that Itaú is exempt from the obligation to hold an AFS licence for the financial services and the financial services are regulated by the CVM; and
 - (g) executing a deed which facilitates enforcement action in Australia in accordance with the requirements set out in RG 176.62.

7 CONSULTATION

We have previously discussed this application with s 22 of ASIC. ASIC is invited to contact s 22 at CVM in relation to any queries it may have regarding CVM and its oversight of Itaú. s 22 is the relevant contact at CVM in connection with this application for relief and has been informed that this application is being made. Please see below contact details:

Superintendência de Relações Internacionais (International Affairs Office):

s 22

Tel: s 22

Fax

Address: Rua Sete de Setembro, 111 – 33º andar, Centro - Rio de Janeiro, RJ – BRAZIL, Cep 20050-901

Email: intl@cvm.gov.br

8 THIRD PARTIES AFFECTED

No third parties are expected to be affected by this application.

9 URGENT APPLICATION

Itaú would be grateful for your urgent consideration of the matter. The Fund has an initial seed investor who would like to invest by February 2010.

10 FEES

We enclose our cheque for the application fee of \$270.

11 ATTACHMENTS

The attachments to this application comprise:

- (a) responses to the questions and points in schedules 1 and 2 of RG 176, marked as 'Attachment A';
- (b) draft relief instrument marked as 'Attachment B'; and
- (c) certified copies of regulatory licences, Portuguese version, marked as 'Attachment C' (English certified translations to follow).

Please contact s 22 of this office on s 22 if you require and further information.

Yours faithfully
Henry Davis York



s 22
Partner
Tel No s 22
Email s 22@hdy.com.au



s 22
Senior Associate
Tel No s 22
Email s 22@hdy.com.au