



Memo

ASIC

Australian Securities & Investments Commission

TO: s 22, Senior Analyst

CC: s 22, Senior Specialist and s 22, Senior Specialist

FROM: s 22, Analyst

RE: **Itaú Unibanco S.A. - Application for an exemption from the requirement to hold an Australian financial services licence**

FILE REF: PMR 2009/33270

DATE: 8 March 2010

1. Introduction

On 30 November 2009, ASIC received an application for relief from Henry Davis York on behalf of Itaú Unibanco S.A. (**Itaú**), a Brazilian entity regulated by the Securities and Exchange Commission of Brazil (**CVM**). Itaú is seeking relief under subsection 911A(2)(l) of the *Corporations Act 2001* (**the Act**) from the requirement to hold an Australian financial services licence (**AFSL**) in order to allow it to provide a range of financial services to Australian wholesale clients. The exemption sought is modelled on the licensing relief that ASIC has previously granted to other foreign financial services providers under Class Orders [CO 03/1099], [CO 03/1100], [CO 03/1101], [CO 03/1102], [CO 03/1103] and [CO 04/1313] (**Class Orders**).

This matter has been assessed in light of ASIC Regulatory Guide 176: *Licensing: Discretionary powers – wholesale foreign financial services providers* (**RG 176**).

2. Recommendation

I recommend that the relief sought be granted, as the matter falls within the policy of RG 176 and all the criteria for granting relief in RG 176 appear to be satisfied. As such, relief can be granted on an operational basis.

3. Background

Itaú wishes to provide the following financial services to Australian wholesale clients without holding an AFSL:

- (i) providing financial product advice; and
- (ii) arranging for a person to deal in a financial product,

with respect to eligible deposit products, derivatives, securities and interests in unregistered managed investment schemes.

Itaú is a wholly owned subsidiary of Itaú Unibanco Holding S.A. (**Itaú Holding**), the largest provider of financial services in Brazil. Itaú Holding proposes to provide its investment management services, through its subsidiary Itaú, to the Australian market. Specifically, Itaú proposes to be appointed as investment manager of a registered managed investment scheme focused on Latin American listed securities, the Itaú Latin America Equity Fund ARSN 141 329 768 (**the Fund**). The Fund has been established as a registered managed investment scheme with Equity Trustees Limited ACN 004 031 298 (**ETL**) as responsible entity. ETL has formed alliances with external specialist investment managers such as Itaú.

Itaú intends to deal in the above mentioned financial products and provide general financial product advice to ETL as responsible entity of the Fund. In addition, Itaú also proposes that its representatives from its portfolio management team in Brazil will visit Australia on an occasional basis for the purposes of undertaking promotional activities (including presentations and meetings with wholesale clients). As such, these visits will entail Itaú providing financial product advice to wholesale clients.

Essentially, the relief sought reflects the financial services and financial products which are contemplated in connection with Itaú's proposed appointment as investment manager of the Fund.

4. Policy

RG 176.7 states that ASIC's policy is to enable a foreign financial services provider (**FFSP**) to provide financial services in Australia without an AFSL only if:

- (a) the particular financial services are provided only to wholesale clients;
- (b) the particular financial services are regulated by an overseas regulatory authority (in this case CVM);
- (c) regulation by CVM is sufficiently equivalent to regulation by ASIC;
- (d) effective cooperation arrangements exist between CVM and ASIC; and
- (e) the FFSP meets all the requirements of the relevant exemption.

5. Analysis of Itaú and its activities

The particular financial services are provided only to wholesale clients

In response to the question of how Itaú will ensure that the financial services provided in Australia will only be provided to wholesale clients, Itaú submitted that it will primarily be providing services to ETL as responsible entity of the Fund. Pursuant to sections 9 and 761GA(7)(d) of the Act, ETL (an AFSL holder) is treated as being a professional investor and thus a wholesale client. Furthermore, Itaú submits that it will adopt internal policies and procedures to ensure that they only carry on business with wholesale clients. Itaú will ascertain the wholesale status of a prospective investor before undertaking any promotional activities with that investor. This may be done, for example, by Itaú first confirming that the institutional investor currently holds an AFSL.

I am satisfied that Itaú appears to have effective mechanisms in place to ensure that it only provides services to Australian wholesale clients. I also note that the provision of the particular financial services to Australian wholesale clients only will be a condition of the relief instrument.

The particular financial services are regulated by an overseas regulatory authority

Initially, Itaú submitted that it was regulated by both CVM and the Central Bank of Brazil (**BACEN**). RG 176.14 states that where an FFSP is regulated by more than one overseas regulatory authority, ASIC will regard the relevant overseas regulator as the regulator which, in its view, has the most responsibility for monitoring and enforcing compliance by the FFSP with its regulatory obligations for financial services similar to those for which an exemption is sought under RG 176.

Itaú later submitted that its proposed investment management activities (for which Itaú is seeking relief for) are all regulated by CVM in Brazil. Specifically, Itaú has confirmed that the provision of financial product advice in relation to, and arranging for a person to deal in, eligible deposit products, derivatives and securities (which will be the services Itaú will be providing in Australia as investment manager of the Fund) are the types of financial services and products regulated and supervised by CVM in Brazil. Itaú has cited Brazilian Securities Law no. 6.385 of December 7, 1976 (**Law no. 6.385**) as the relevant Brazilian law that determines the scope of CVM regulation and supervision. Law no. 6.385 relevantly provides that:

" The following securities shall be subject to the provisions of this law:

I – shares, debentures and subscription bonuses;

...

III – certificates of deposit of securities;

...

VII – futures, options and other derivative agreements whose underlying assets are securities;

VIII – other derivatives agreements regardless of the respective underlying assets;

... "

Itaú's application for licensing relief relates to it providing financial product advice and arranging for a person to deal in eligible deposit products, derivatives and securities, which are all captured by Law no. 6.385.

As such, I am satisfied that CVM (and not BACEN) is the relevant overseas regulator, as CVM is the regulator in Brazil which has the most responsibility for monitoring and enforcing compliance by Itaú with its regulatory obligations in relation to its proposed investment management activities in respect of which the exemption is sought.

It should be kept in mind that Itaú does not propose to engage in any banking business activities in Australia. Itaú will only be engaged in investment management activities, which is the jurisdiction of CVM.

In any event, ASIC, in assessing this application, has had regard to the communication and cooperation mechanisms that exist between CVM and BACEN. Itaú has submitted that CVM and BACEN have a formal information exchange agreement which supports the two regulators' respective regulatory responsibilities and supervision with respect to financial institutions in Brazil. Relevantly, the formal information exchange agreement establishes that:

- each regulator will have access to each other's information systems; and

- if during its regular regulatory activities, CVM or BACEN finds irregularities or practices that may concern the other, they are required to immediately inform each other.

We propose to incorporate the requirement that CVM has an ongoing information exchange arrangement with BACEN as a condition of the relief instrument.

Overall, Itaú has established that it is regulated by an overseas regulatory authority, being CVM, and that CVM regulates the provision of financial services in respect of which the exemption is sought.

Regulation by CVM is sufficiently equivalent to regulation by ASIC

RG 176.22 states that regulation by an overseas regulatory authority is sufficiently equivalent to regulation by ASIC if the regulatory regime under which that authority operates:

- (a) is clear, transparent and certain;
- (b) is consistent with *IOSCO Objectives and Principles of Securities Regulation*;
- (c) is adequately enforced; and
- (d) achieves sufficiently equivalent outcomes as the Australian regime achieves for the regulation of wholesale financial services.

RG 176.32 outlines the outcomes that the Australian regime achieves for wholesale financial services. Those outcomes are:

- (a) financial service providers are fair and honest;
- (b) financial service providers are competent to provide financial services;
- (c) financial service providers have adequate resources; and
- (d) financial service providers have adequate risk management processes.

Schedule 2 of RG 176 identifies examples of regulatory mechanisms that go towards achieving the above key regulatory outcomes.

The foreign regulatory regime must be clear, transparent and certain

In relation to the "clear, transparent and certain" criterion:

- (a) the Brazilian regime is "clear" in that it is capable of being easily understood;
- (b) the Brazilian regime is "transparent" in that its rules, policies and practices are readily available on the CVM website (www.cvm.gov.br) which is easily accessible by all market participants; and
- (c) the Brazilian regime is "certain" in that the rules, policies and practices are consistently applied and not subject to indiscriminate change.

The Brazilian regulatory regime is codified in writing and the official CVM website offers English translations of important provisions. By reading these provisions, in addition to Itaú's submissions, I was able to gain an understanding of the way in which the regulatory regime administered by CVM operates. As such, the regime appears to be clear, transparent and certain for the purposes of RG 176.23-25.

The foreign regulatory regime must be consistent with *IOSCO Objectives and Principles of Securities Regulation*

CVM is a member of IOSCO and is a signatory to the IOSCO Multilateral Memorandum of Understanding concerning consultation, cooperation and the exchange of information.

The three IOSCO objectives of securities regulation (as set out in a document titled "Objectives and Principles of Securities Regulation" dated May 2003) are:

1. The protection of investors;
2. Ensuring that markets are fair, efficient and transparent; and
3. The reduction of systemic risk.

The regulatory objectives of CVM (as stated on its website and reflected in Law no. 6.385) are as follows:

1. to assure the proper functioning of the exchange and over-the-counter markets;
2. to protect all securities holders against fraudulent issues and illegal actions performed by company managers, controlling shareholders, or mutual fund managers;
3. to avoid or inhibit any kind of fraud or manipulation which may give rise to artificial price formation in the securities market;
4. to assure public access to all relevant information about the securities traded and the companies which have issued them;
5. to ensure that all market participants adopt fair trading practices;
6. to stimulate the formation of savings and their investment in securities; and
7. to promote the expansion and efficiency of the securities market and the capitalization of Brazilian publicly held companies.

The regulatory objectives of CVM appear to be consistent with the IOSCO objectives of securities regulation, as CVM's regulatory objectives include the protection of investors (CVM regulatory objective 2 above), ensuring that markets are fair, efficient and transparent (CVM regulatory objectives 1, 3 and 7 above) and the reduction of systemic risk (CVM regulatory objective 5 above). In relation to the IOSCO objective of reducing systemic risk (which relates to adequate and ongoing capital and other prudential requirements), CVM has the power to require Itaú at any time to confirm its financial position (pursuant to Article 9 of Law no. 6.385). In addition, Itaú is an authorised financial institution under the supervision and regulation of BACEN, and as such, is subject to Basel I¹. Itaú has submitted that BACEN establishes minimum levels of capital capacity and net worth for multiple service banks such as Itaú of R\$ 17,500,000 (i.e. seventeen million and five hundred thousand Reais) pursuant to Resolution 2.607/99.

As such, the Brazilian system of regulation can be regarded as consistent with *IOSCO Objectives and Principles of Securities Regulation*. There is an indication, at least at a high level, of equivalence between the Australian and Brazilian regulatory environments as per RG 176.27. Additionally, ASIC has access to Brazil's IOSCO self-assessment questionnaires which provides a level of comfort on this issue.

¹ Basel II is also in the process of being introduced in Brazil.

The foreign regulatory regime is adequately enforced

Article 9 of Law no. 6.385 empowers CVM to do any of the following in enforcing compliance with Brazilian law:

- issuing subpoenas requesting information or clarification to market participants under penalty of a fine;
- request information from any government agency;
- investigate, through administrative proceedings, illegal acts and inequitable practices of market participants; and
- apply the penalties provided for in Article 11 of Law no. 6.385.

Article 12 of Law no. 6.385 states that when an investigation concludes that a crime which merits public prosecution has occurred, CVM shall notify the Public Attorney's Prosecutor's Office in order to file a criminal suit.

Article 11 of Law no. 6.385 empowers CVM to impose the following penalties on violators of any provision of Law no. 6.385, the Corporation Law, or its resolutions, as well as any other legal provisions that are CVM's responsibility to enforce:

- a warning;
- a fine;
- temporary disqualification, up to a maximum period of 20 years
- suspension of the authorisation or registration to carry out the activities covered by this law; and
- cancellation of the authorisation or registration to carry out the activities covered by this law.

Article 11 of Brazilian Securities Law No. 306 of May 5, 1999 (**Law no. 306**) (which establishes the regulatory responsibilities that professional assets managers must follow in Brazil) allows CVM to revoke Itaú's authorisation to act as manager of securities portfolios if:

1. any falsity is found to affect the documents or statements submitted by the professional asset manager in their original application for authorisation; or
2. it is verified that the professional asset manager authorised by CVM no longer meets any of the requirements and conditions defined in Law no. 306 for the granting of the authorisation; or
3. the manager of the securities fails to submit the information described in Article 12 of Law no. 306 for over two consecutive years.

Professional asset managers such as Itaú are also required to notify CVM by May 31 of each year information relating to the portfolios under its administration based on the positions on March 31 of each year (pursuant to Article 12 of Law no. 306).

In relation to evidence to prove that CVM uses the above mentioned powers and resources consistently to promote compliance with its regulatory regime (as required by RG 176.28), CVM's website publishes examples of recent enforcement action taken by CVM².

Itaú has demonstrated that the Brazilian regulatory regime administered by CVM has access to a range of legislative powers to adequately enforce its rules.

The foreign regulatory regime achieves sufficiently equivalent outcomes as the Australian regime achieves for the regulation of wholesale financial services

FFSPs are fair and honest

Schedule 2 of RG 176 states that examples of regulatory mechanisms which tend to achieve this outcome include licences or other approvals are only granted to FFSPs who are of good reputation and character, a statutory obligation to act fairly and honestly is imposed on FFSPs and FFSPs are subject to fiduciary duties or contractual obligations to act fairly and honestly with clients.

In order to become a professional asset manager under the Brazilian regime, a professional asset manager must obtain formal authorisation from CVM. When entities such as Itaú apply to CVM for authorisation to act as professional asset managers, they must assign the responsibility for the management of securities portfolios to a director, delegate manager or managing partner (pursuant to Article 7 of Law no. 306). That person must also be authorised by CVM to act as a manager of securities portfolios. Article 4 of Law no. 306 requires CVM to be satisfied that an authorisation to act as manager of securities portfolios shall only be granted to individuals domiciled in Brazil who have an unblemished reputation. In addition, Article 5 of Law no. 306 states that an application for authorisation needs to be accompanied by a statement duly signed by the party informing CVM whether the applicant has been sentenced following charges of bankruptcy, malfeasance in office, active or passive bribery, market rigging, insider trading, undue occupation of a position, embezzlement or a crime against welfare. Furthermore, Article 14 of Law no. 306 requires the individual or legal entity in charge of maintaining securities portfolios to be loyal to the interests of its clients and avoid practices that could breach their trust.

Of the regulatory mechanisms outlined in Schedule 2 of RG 176, the following are arguably present under CVM regulation:

- Licences or other approvals are only granted to FFSPs who are of good reputation and character; and
- FFSPs are subject to fiduciary or contractual obligations to act fairly and honestly in their dealings with clients.

Therefore, the regulatory outcome that FFSPs are fair and honest is achieved under the Brazilian regime and is sufficiently equivalent to ASIC's regulation of wholesale financial service providers.

² For example, on 16 March 2010, CVM sanctioned Fontana Mincaroni for misusing relevant information not yet made public in relation to shares of Perdigao SA, in violation of the provisions of art. 155, § 4 of Law 6,404 of December 15, 1976. Flavio Fontana Mincaroni was ordered to pay a fine in the amount of R\$ 500,000.00.

FFSPs are competent to provide financial services

Schedule 2 of RG 176 states that examples of regulatory mechanisms which tend to achieve this outcome include licences or approvals are only granted to FFSPs who are competent, a statutory obligation on FFSPs to maintain competence, a statutory obligation to ensure a FFSP's employees and representatives are adequately trained and competent and a FFSP's employees and representatives meeting specified minimum educational and other requirements.

Article 4 of Law no. 306 states that CVM must be satisfied that an individual assigned responsibility for the management of securities portfolios has:

- graduated from a university-level course, at a school officially accredited in Brazil or abroad;
- professional experience of at least 3 years in specific activities directly related to the management of third party funds in the financial market; and
- at least 5 years experience in the capital market, in an activity that provides evidence of aptitude to manage third party funds.

In addition, Law no. 306 imposes a statutory obligation on professional asset managers to ensure they and their employees are adequately trained and competent. Article 15 of Law no. 306 states that the legal entity in charge of managing securities portfolios must implement and maintain a training program for managers, collaborators and employees with access to confidential information who are part of the decision making process relating to investments.

Of the regulatory mechanisms outlined in Schedule 2 of RG 176, the following are arguably present under CVM regulation:

- Licences or other approvals are only granted to FFSPs who are competent to provide the financial services they wish to provide;
- A statutory obligation is imposed on FFSPs to ensure that their employees and representatives are adequately trained and competent; and
- The FFSP's employees and representatives must meet specified minimum educational and other qualification requirements.

Therefore, the regulatory outcome that FFSPs are competent is achieved under the Brazilian regime and is sufficiently equivalent to ASIC's regulation of wholesale financial service providers.

FFSPs have adequate resources

Schedule 2 of RG 176 states that examples of regulatory mechanisms which tend to achieve this outcome include licences or approvals are only granted to FFSPs who establish that they have adequate resources (financial, technological and human resources) to provide the financial services they wish to provide, a statutory obligation on FFSPs to have adequate resources, FFSPs meeting minimum resource requirements and FFSPs being subject to prudential supervision by an independent regulator.

Article 8 of Law no. 306 states that a request for an authorisation to exercise activities of management of securities portfolios submitted by a legal entity must include information

about the technical department³, including the number of employees, the nature of the activities developed by its members and the available infrastructure, including a detailed list of equipment, programs and services used as part of the activity of portfolio management.

Article 8 of Law no. 306 appears to achieve the regulatory outcome that licences or approvals are only granted to FFSPs who establish that they have adequate technological and human resources. In relation to whether CVM imposes on professional asset managers an obligation to have a minimum level of financial resources, ASIC sought further submissions from Itaú. Itaú submitted that while Law no. 306 does not expressly prescribe minimum levels of financial resources for authorised entities, CVM has the power (pursuant to Article 9 of Law no. 6.385) to require that an entity at any time confirm its financial position. In addition, Itaú is an authorised financial institution under the supervision and regulation of BACEN. As a financial institution authorised by BACEN, Itaú is subject to Basel I.

Itaú also submitted that the Basel Ratio (i.e. the solvency ratio) of Itaú reached 16.1% (in December 2008), significantly more than the minimum required by BACEN of 11%, which they submit, is evidence of Itaú's conservative policy of risk management.

Of the regulatory mechanisms outlined in Schedule 2 of RG 176, the following are arguably present under Brazilian regulation:

- Licences or other approvals are only granted to FFSPs who establish that they have adequate resources (including financial, technological and human resources) to provide the financial services they wish to provide;
- FFSPs must meet specified minimum resource requirements; and
- FFSPs are subject to prudential supervision by an independent regulator (being BACEN).

Therefore, the regulatory outcome that FFSPs have adequate resources is achieved under the Brazilian regime and is sufficiently equivalent to ASIC's regulation of wholesale financial service providers.

FFSPs have adequate risk management processes

Schedule 2 of RG 176 states that examples of regulatory mechanisms which tend to achieve this outcome include licences or approvals only being granted to FFSPs who establish that they have adequate risk management systems to provide the financial services they wish to provide, a statutory obligation on FFSPs to have adequate risk management systems, a statutory obligation on FFSPs to have adequate internal controls and specific obligations on FFSPs to ensure they keep financial records that correctly record and explain the transactions and financial position of the financial services business carried on by the FFSP.

Itaú assert that the regulatory outcome that FFSPs have adequate risk management processes is achieved due to the regulatory mechanisms outlined in Article 14 of Law no. 306.

Article 14 of Law no. 306 requires that there must exist a written agreement executed between the professional asset manager and the client. This agreement manages the risks

³ The technical department is responsible for the preparation of investment studies and analysis to support the decisions to be made and maintaining proper records containing the justifications for the recommendations made (Article 7 of Law no. 306).

involved in providing financial services to clients and must contain the basic characteristics of the services to be rendered, including:

- (a) the investment policy to be adopted, which must be in line with the profile of the investor, its financial standing and goals;
- (b) the remuneration payable in exchange for the services;
- (c) information about other activities that the manager itself may develop in the market and any potential conflicts of interest existing between such activities and the management of the securities portfolio;
- (d) the risks inherent in the different types of transactions with securities in stock exchanges, over-the-counter markets, futures market and share loan transactions that the manager intends to carry out using the investor's funds, including an explanation that the investment in derivatives may lead to losses that are greater than the original investment; and
- (e) the contents and regularity of the information to be rendered by the manager to the client.

The professional asset manager must also maintain the securities that are part of the portfolios under management under the custody of a duly accredited entity and must take all actions necessary to protect the interests of clients.

Itaú has submitted that it has an internal compliance team that is responsible for checking periodically if all the requirements detailed above are being followed correctly. In addition, the internal compliance team has broader responsibilities in terms of monitoring trading. It has responsibility for creating appropriate trading protocols and implementing measures to ensure that those protocols are followed.

Article 14 of Law no. 306 also imposes a statutory obligation on the professional asset manager to ensure, by means of proper internal controls, the permanent fulfilment of applicable rules and regulations relating to the different investment alternatives and options, to the actual management of the portfolio and to the ethical and professional standards. Article 15 of Law no.306 then lists some of the internal controls that must be adopted by professional asset managers. Professional asset managers must ensure:

- the full physical segregation of the areas in charge of different activities relating to capital markets;
- the preservation of confidential information by all managers, collaborators and employees and the prohibition of disclosure of such information to unauthorised individuals or to individuals that could use them in an improper manner in the course of a decision making process relating to investments of their own or third party funds;
- the restricted access to files, as well as the adoption of controls that restrict and enable the identification of individuals with access to confidential information; and
- the establishment of policies relating to the purchase and sale of securities by employees, directors and managers of the entity.

Lastly, Article 14 of Law no. 306 requires professional asset managers to maintain all documents relating to the transactions with securities that are part of the portfolios under management. This obligation is akin to the regulatory outcome that FFSPs are required to ensure they keep financial records that correctly record and explain the transactions and financial position of the financial services business carried out by the FFSP.

Of the regulatory mechanisms outlined in Schedule 2 of RG 176, the following are arguably present under CVM regulation:

- Licences or other approvals are only granted to FFSPs who establish that they have adequate risk management systems to provide the financial services they wish to provide;
- A statutory obligation to have adequate internal controls is imposed on FFSPs; and
- FFSPs are required to comply with specific obligations to ensure they keep financial records that correctly record and explain the transactions and financial position of the financial services business carried on by the FFSP.

Therefore, the regulatory outcome that FFSPs have adequate risk management processes is achieved under the Brazilian regime and is sufficiently equivalent to ASIC's regulation of wholesale financial service providers.

Effective cooperation arrangements exist between CVM and ASIC

International Cooperation Requests has confirmed that ASIC and CVM are parties to a Memorandum of Understanding (MoU) dated 7 November 1997. The MoU is still current and has been shown to be an effective way of sharing information. ASIC wrote to CVM requesting information about whether or not CVM has taken any disciplinary action against Itaú. CVM responded to this request by stating that Itaú Holding (the parent holding company and NOT the applicant requesting relief) is subject to an ongoing investigation about possible infringements of CVM Instruction 358/02 (which appears to be equivalent to our continuous disclosure requirements). While this is of some concern, I submit that it is not fatal to this application for relief as:

- It is the parent company of Itaú and not Itaú itself that is being investigated for a possible breach of CVM Instruction 358/02;
- Itaú Holding has not yet been found to have breached CVM Instruction 358/02, and as such, ASIC cannot form an adverse view about Itaú Holding's compliance with Brazilian securities regulation; and
- CVM has disclosed more to ASIC than it was necessarily required to. CVM went the extra step to inform ASIC of any disciplinary actions currently on foot against Itaú Holding. This is a positive sign that the cooperation arrangements between ASIC and CVM are effective.

The FFSP meets all the requirements of the relevant exemption

Itaú has submitted that it will meet all the requirements of the relevant exemption. Those requirements are:

- Itaú will only provide financial services in Australia to wholesale clients;
- Itaú will comply with the requirements of CVM's regulatory regime when providing those services in Australia;
- Itaú will maintain its authorisation to act as a professional asset manager under CVM's regulatory regime;
- Itaú will agree to notify ASIC of each significant change to the financial services authorisations as they apply to the financial services provided in Australia;
- Itaú will agree to disclose in all relevant disclosure materials that Itaú is exempt from the obligation to hold an AFSL for the financial services and that the financial services are regulated by CVM; and

- Itaú will execute a deed which facilitates enforcement action in Australia in accordance with the requirements of RG 176.62.

6. Implementation of relief – Class order vs. Individual instrument of relief

As ASIC is minded to grant the relief requested, the question arises as to whether the relief should take the form of a class order for CVM regulated FFSPs or, alternatively, whether the relief should take the form of an individual instrument modelled on the Class Orders with appropriate modifications. On balance, it is recommended that we proceed by way of an individual relief instrument for the following reasons:

- This is the first and only Brazilian regulated FFSP application for relief before ASIC at the present time. There is no evidence that multiple Brazilian regulated FFSPs will apply to ASIC for relief from the obligation to hold an AFSL; and
- The relief requested is not as broad as the Class Orders, in that the requested relief only extends to a limited subset of financial services and financial products.

7. Terms of the relief

Even though CVM has been established as the relevant overseas authority, we have decided to grant the relief on the basis that Itaú has a current licence to act as a professional asset manager from CVM **as well as** a banking licence from BACEN. As BACEN seems to impose minimum financial resource requirements on multiple service banks such as Itaú, we consider that the holding of a current banking licence from BACEN should be a condition of the relief. **As such, this application should only be used as a precedent for future Brazilian FFSPs that have both a current licence to act as a professional asset manager from CVM AND a current banking licence from BACEN.**

8. Recommendation

I recommend that ASIC grant the individual licensing relief sought under subsection 911A(2)(l) of the Act on terms modelled on the Class Orders (with appropriate modifications) to allow Itaú to provide a range of financial services to Australian wholesale clients.