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20 February 2006

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Our reference: 144/13338/80039175

Dear Manager

Application for Licensing Relief for Houlihan Rovers SA

1. Application for relief

- 1.1 We write on behalf of Houlihan Rovers SA ("**Houlihan Rovers**"), a Belgian incorporated company, which is regulated by the US Securities and Exchange Commission ("**SEC**") to apply for relief under section 911A(2)(i) of the Corporations Act from the requirement to hold an Australian financial services licence ("**AFSL**").
- 1.2 Houlihan Rovers would be able to rely on Class Order 03/1100 ("**CO 03/1100**") for SEC regulated entities except for the fact that it is a company incorporated in Belgium rather than the United States and is, therefore, ineligible for relief under CO 03/100. Houlihan Rovers seeks relief on terms identical to CO 03/1100, other than the requirement that it be a company incorporated in the United States.
- 1.3 We refer to the telephone discussions between s 22 of Clayton Utz and s 22 of ASIC concerning this matter on 13 February 2006.

2. Background

- 2.1 Houlihan Rovers is a real estate securities investment management company based in Brussels, Belgium offering tailored investment management products to institutional investors. The company is registered under both the laws of Belgium and the US, in the case of Belgium with the Belgian Banking Finance and Insurance Commission and, in the US with the SEC. Houlihan Rovers is also "passport" so that it is able to provide financial services in a number of other European countries such as the Netherlands, Luxembourg and Ireland.
- 2.2 Houlihan Rovers' proposed activities in Australia are the provision of investment management services, principally related to real estate securities, to Australian wholesale clients. These services would be provided by the same staff who provide services under Houlihan Rovers' SEC registration.

3. Application of Class Order 03/1100

- 3.1 We note that as a body corporate registered under section 203(c) of the Investment Advisers Act of 1940, Houlihan Rovers would (other than in one respect) fulfil within the requirements of CO 03/1100. However, paragraph (aa) of Schedule A of CO 03/1100 requires that in order to obtain the benefit of that relief:

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"(aa) the body is either:

(i) a body corporate incorporated in the US or a State of the US; or

(ii) a partnership formed in the US or a State of the US;"

Houlihan Rovers, as a Belgian incorporated entity, does not fulfil either of these requirements and, therefore, is not eligible for the relief in CO 03/1100.

4. Existing ASIC Policy

4.1 We note that as the form of relief requested (see paragraph 6 below) is largely the same as existing CO 03/1100, this application is consistent with ASIC's policy in granting relief to wholesale foreign financial service providers as set out in Policy Statement 176 in relation to matters such as the regulation by the SEC being "sufficiently equivalent" to Australian regulations.

4.2 In relation to the fact that Houlihan Rovers is not a body incorporated in the US, we are instructed by Houlihan Rovers that its regulation by the SEC is not affected by the fact that it is a Belgian, rather than US incorporated, entity. In particular, Houlihan Rovers' regulation by the SEC as a non-resident adviser makes provision for the service of process and requires undertakings related to the production of books and records. If ASIC were to grant the requested relief, we understand that the position of Houlihan Rovers in providing financial services to Australian wholesale clients would be no different to that of other SEC regulated entities who are able to rely on CO 03/1100.

5. Previous Relief

5.1 We note that on at least one other occasion ASIC has granted relief along similar lines. In instrument 04/0250 (ASIC Gazette 10A/04, 10 March 2004) ASIC granted relief to a company incorporated in the State of Delaware on the basis of its regulation in Hong Kong by the Securities and Futures Commission of Hong Kong. We note that Class Order 03/1103 (the relevant class order for Hong Kong regulated entities) imposes a similar requirement in that it requires an entity to be either a body corporate incorporated in Hong Kong or a partnership formed in Hong Kong in order to be able to take advantage of the relief set out in that instrument.

6. Form of Relief

We request that ASIC grant relief that is in the same form as CO 03/1100 other than the omission of paragraph (aa) of Schedule A. If ASIC is minded to insert a replacement condition in place of paragraph (aa), we suggest that the following would be appropriate:

"(aa) Houlihan Rovers SA is a company incorporated in Belgium;"

7. Request for timely consideration

Houlihan Rovers anticipates commencing providing financial services to Australian clients by April 2006 and would like certainty in relation to obtaining an exemption from Australian licensing requirements well before that date. Accordingly we would be very grateful if you would consider this application at your earliest convenience.

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8. **Fee**

We enclose a cheque for \$270, being the prescribed fee for a body corporate as set out in Form FS10.

If you wish, we would be happy to discuss this matter with you further.

Yours sincerely



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