



# Response to the APEC consultation for an Asia Region Funds passport

BNP PARIBAS SECURITIES SERVICES, a wholly owned subsidiary of BNP PARIBAS GROUP, is a leading global custodian and provides specialist securities services and investment operations support to a wide range of financial intermediaries, asset managers, asset owners and issuers. Its network is one of the most extensive in the industry, covering over 100 markets with its own offices in 34 countries across five continents, including a local presence in Japan, Singapore, China, Hong Kong, Australia and New Zealand. BNP PARIBAS SECURITIES SERVICES provides services almost 7,000 funds worldwide, holds USD 7.3 trillion in assets under custody and administer USD 1.3 trillion in assets across all markets and instruments.

## I- Key messages

BNP PARIBAS SECURITIES SERVICES welcomes the opportunity to contribute to the APEC consultation on the arrangements for an Asia Region Funds Passport. One of BNP PARIBAS SECURITIES SERVICES' key priorities is to make proposals which reinforce the level of investor protection within the Asian Markets, to ensure that passport funds develop an early reputation for being transparent and well-regulated products, one of the key factors of success for similar schemes like UCITS.

Although on the whole BNP PARIBAS SECURITIES SERVICES agrees with the proposed approach it believes that the rules of passport should be more detailed concerning the custodian and the independent oversight entity - in order to create a minimum standard for these functions which play a significant role in the protection of the investors' interests. Concerning the management of conflict of interests and segregation of duties at the fund operator level the passport rules should be detailed as well in order to prevent any event from conflict of interests.

BNP PARIBAS SECURITIES SERVICES is willing to provide the APEC Regulators with a very constructive view on concrete and operational aspects that need to be taken into consideration when defining requirements for custody arrangements and independent oversight. In its submission, the response of BNP PARIBAS SECURITIES SERVICES to the APEC consultation will focus on independent oversight and custodian issues.



BNP PARIBAS SECURITIES SERVICES would be happy to provide further additional detail on any of the issues considered below.

## **II- Detailed contribution to the public consultation**

### **1) Operation of the passport fund -Independent oversight**

**Q3.17 Are there other means to ensure the policy objective of independent oversight is met? If so please explain these other means and why they should be permitted.**

BNP PARIBAS SECURITIES SERVICES agrees that the fund's operator must be subject to independent oversight carried out by a legally and functionally separated entity from the entity responsible for the portfolio management.

BNP PARIBAS SECURITIES SERVICES also agrees that the scope of oversight duties should remain independent of the fund operator's activities related to the fund's investment or risk management so that the scope of the oversight duties can remain focused on the compliance of the operator with the constitutive documents, and offer documents of the passport fund and laws and regulation relating to the operation of the funds;

and

BNP PARIBAS SECURITIES SERVICES also believes that an independent custodian, which centralizes the comprehensive and up to date inventory of all passport fund's assets is well placed to perform oversight duties and in particular to prevent or detect loss or misappropriation of assets. It was the option retained under the UCITS directive.

In order to give confidence to the investors we believe that the underlying principles of the oversight duties (and safekeeping duties) should be detailed further in the passport rules.

In particular passport rules should clarify the independent oversight entity:

- should be entitled to receive from the fund operator
  - information on all cash accounts opened in the name of the passport fund and the procedures ensuring that the independent oversight entity will be informed when any new account is opened in the name of the fund
  - all relevant information it needs to make sure that the payments of subscription or investment's income are booked in cash accounts opened in the name of the fund,
  - all other information requested by the independent oversight entity to perform monitoring activities for the fund,
- should ensure the fund operator complies with applicable laws and regulations and fund's rules with regard to the investment policy and fund's NAV calculation,
- should verify that preventive controls and segregation of duties have been implemented by the fund operator in order to prevent the following reconciliations being altered to conceal



misappropriation and should monitor on an ongoing basis the outcomes of the reconciliations and actions taken as a result of any discrepancies identified by the reconciliation procedures performed by the fund operator between :

- the subscription orders and the subscription proceeds, and the number of units or shares issued
- the redemption orders and the redemptions paid, and the number of units or shares cancelled
- the accounting inventory of the fund's assets and the custodian's inventory of the fund's assets
- the cash accounting records of the funds and the fund's bank cash statements;

BNP PARIBAS SECURITIES SERVICES also believes that when non-compliance can be rectified without undue delay it may not be necessary to report it to the regulator. The independent oversight entity should notify the fund operator if an irregularity has not been rectified without undue delay and also the competent authorities if the situation cannot be clarified , as the case may be , or corrected .

The independent entity's oversight duties include reporting any non-compliance to the regulator within five business days of the entity becoming aware of the exceptions. BNP PARIBAS SECURITIES SERVICES proposes that the non-compliance caused from market movement without active actions by the fund operator involved may be exempted from the regulator reporting for a designated period, i.e., three months or six months.

## 2 - General questions about the substantive requirements

**Q3.29** Do you agree with the proposed approach in terms of whether home, host or passport rules apply to this area of CIS regulation?

On the whole BNP PARIBAS SECURITIES SERVICES agrees with the proposed approach.

**Q3.30** Do you think that the proposed approach would enable the passport to achieve its key objective of providing a high degree of investor protection? If not, in what way can the approach be enhanced?

BNP PARIBAS SECURITIES SERVICES believes that rules of passport should be more detailed concerning:

- the custodian and the independent oversight entity - in order to create a minimum standard for these functions which play a significant role in the protection of the interest of the assets of the investors.
- the steps fund operators should take in terms of structures and organisational and administrative procedures in order to:
  - identify, prevent, manage, monitor and disclose conflicts of interest,



- to separate the risk management function , both functionally and hierarchically from the operating units, including the portfolio management function.,
- to implement preventive an detective controls and segregation of duties to prevent fraud

**Q3.31** Where the passport rules apply, do you agree with the proposed content of the passport rules? If you do not agree, please explain why not. In your view, are there better ways to achieve the underlying purpose of the proposed rules?

Concerning the separation of assets, in order to protect the fund's assets in the event of bankruptcy of the custodian BNP PARIBAS SECURITIES SERVICES is of the opinion it is essential to hold the fund's assets in separated accounts at the custodian level. At a sub-custodian level, the assets of the custodian's clients, including the fund's assets, should be kept separately from the own assets of the custodian assets and from other assets held by the sub-custodian.

**Q3.32** What impact would the proposed approach have on competitiveness and investor confidence?

BNP PARIBAS SECURITIES SERVICES is of the opinion that the passport will put the Asian industry on a competitive footing by creating a strong brand for Asia region-based CIS provided that some passport rules are sufficiently detailed in some area that are crucial to provide confidence to investors.

