

Submission to

**Primary Markets Conduct Division
Market Conduct Department
Monetary Authority of Singapore**

**10 Shenton Way
MAS Building
Singapore 079117
(Email: arfp-consult@mas.gov.sg)**

On the matter of

**APEC Arrangements for an Asian Region Funds
Passport: Feedback Statement and Consultation on
Draft Rules dated 27 February 2015**

Chan & Goh LLP

(10 April 2015)

FEEDBACK ON APEC CONSULTATION ON THE DETAILED RULES AND OPERATIONAL ARRANGEMENTS

On 27 February 2015, the APEC issued a document entitled “Arrangements for an Asian Region Funds Passport: Feedback Statement and Consultation on Draft Rules”. We have reviewed the consultation and would like to provide our comments on the consultation for your consideration.

1. Consultation Question 1

In Singapore, funds are typically distributed through distributors such as banks, licensed financial advisory firms and capital market services licence holders which may be exempt financial advisers in respect of marketing of collective investment schemes. There are adequate venues for operators to market their passport funds without having to be licensed as the aforesaid entities would be regarded as ‘qualified distributors’ and can assist with the distribution of passport funds without the operator having to be licensed.

As a general point to note, operators may have alternative options with the increasing use of electronic/internet-based platforms, like Ifast’s fundsupermart or Robo-Advisors in the future, which may offer cross-border distribution alternatives, subject to such platforms complying with the relevant host jurisdiction’s licensing or distribution rules. Such alternatives may, in time, address any concerns regarding the availability of adequate distribution avenues in each participant country.

2. Consultation Question 2

It is appropriate to use the USD for the financial resources test so that there is a common currency for all the participants to meet. The diversity of currencies in the APEC region makes it impractical to prefer any of their currencies over the other and the USD is also a suitable neutral currency which is commonly used in the financial markets. Using any other currency, for example the Euro, would also give rise to the same issues of currency fluctuations between the selected currency and the currency of each participant country.

3. Consultation Question 8

In the case of a unit trust, as the manager (operator) and independent oversight entity (trustee) are independent of each other, it might be onerous on the trustee, as it does not partake in the manager’s operations, to certify that it has reason to believe any performance fees payable in relation to the passport fund will comply with written policies of the manager that relate to the basis of the fees charged and does not result in excessive risks being taken by the manager of the passport fund, after taking into account the arrangements to manage risk of the passport fund. Section 47(1)(c) could possibly be amended as follows:

“The independent oversight entity has during the previous 13 months stated in writing to the Operator that the independent oversight entity ~~has reason~~ was not aware of any reasons to believe any fees payable in relation to the Passport Fund will result in the Operator not complying with written policies and procedures for fees of the Operator for the Passport Fund designed to ensure compliance with subsection (1)(a) and (1)(b).”

Please clarify if there is a reason why the “previous 13 months” is used as opposed to the last financial year (typically 12 months)? In addition, when does this confirmation have to be given and should this be within a time frame (for example, within 1 month of the end of the said 13 month period)?

4. Consultation Question 9

In respect of Section 51(2), the operator has to suspend a passport fund if the passport fund is in the process of winding up. Since such process consists of several stages, at which stage does the operator have to suspend such fund? Would this take effect on the date unitholders approve the termination at an extraordinary general meeting (“EGM”) or only when the operator actually commences the termination process and liquidates assets after such approval has been obtained?

In order to prepare for such EGM, and collate all proxies received for confirmation against the investors named in the register, some deeds provide for suspension of dealing 48-hours before the date of the EGM. Would this also be a permitted ground for suspension of redemptions?

In addition, an additional ground for the suspension of redemptions commonly found in deeds would be during any period when the operator is unable to conduct its business activities or its ability to conduct its business activities is substantially impaired, as a direct or indirect result of local or foreign government restrictions, the imposition of emergency procedures, civil disorder, acts or threatened acts of terrorism, war, strikes, pestilence, natural disaster or other acts of God. Would this fall within the Section as currently drafted?

Other general comments

1. Offering interests in a Host Economy (Section 4 of Annex 2)

Subsection 4(2)(d) of Annex 2 read with subsection 4(1) of Annex 1 provides that a host economy must charge fees that are consistent with fees that it would charge non-passport funds or operators in that jurisdiction in like circumstances, and in the event that a host economy does not have a corresponding fee or charge, any fee or charge should not exceed a reasonable estimate of the cost to the host economy of performing the relevant function in relation to the passport fund. Any host regulator which does not impose any fee or charge for the authorisation of its domestic funds should consider setting out such fees to provide transparency and clarity for operators who wish to passport their funds into such jurisdiction so that there is no uncertainty in trying to ascertain what is deemed reasonable by such regulator.

2. Delegation of functions by Operator (Section 11 of Annex 3)

We note that the Working Group considers that where the function of investment management for more than 20% of the value of the assets is delegated, regulated licensed investment managers in France, Germany, Luxembourg, the United Kingdom and the United States of America are broadly similar in effectiveness to that of the participating countries. Please consider if more countries should be included in this list as there may be other jurisdictions which have regulatory regimes which are broadly similar in effectiveness. To what extent would the Working Group consider delegation to other regulated licensed investment managers domiciled within other member states of the European Union? How frequently will any review or update of the acceptable jurisdictions be done by the Working Group and will there be any opportunity for representations to be made to extend the list to other jurisdictions?