



10 April 2015

Submitted online at
<http://fundspassport.apec.org/consultation-on-rules/>

Dear Sir/ Madam,

Deutsche Bank (DB) welcomes the opportunity to comment on the Asia-Pacific Economic Cooperation's (APEC) most recent proposal for an Asia Region Funds Passport (ARFP) scheme. We continue to strongly support the objectives of this and other regional fund passporting schemes. We would also like to reiterate our appreciation of the ongoing cross-border regulatory cooperation which is supporting the development of the framework governing how the ARFP will operate.

Broadly, the latest consultation papers set out a good operational framework for the regulatory aspects of the ARFP and we welcome the detailed revisions that have been made to last year's proposals. Our views on the questions posed, as well as some specific aspects of the operating framework, are attached.

While we appreciate that some, more detailed, regulations have been addressed in the paper, we note that no proposals have been published on a number of fundamental issues including taxation, data privacy and aspects of cross-border compliance reporting. We recognise that such complex issues will inevitably require more detailed consideration, engaging other bodies and authorities as necessary. Making progress on this is important to reduce the risk of overlapping or conflicting requirements having a detrimental impact on the functioning of the ARFP, which would affect its appeal to investors and market participants alike. We strongly recommend that the Working Group prioritise solving these core issues as soon as possible, with a view to the publication of practical guidelines prior to the finalisation of the Memorandum of Understanding (MoU). This approach would identify potential difficulties and support delivery of the Government-level commitments to launching the scheme.

The guiding principle of the scheme's design, as the MoU is finalised, should continue to be the reduction of real or perceived barriers to entry. We continue to believe that the success of the scheme will ultimately be determined by its scale and that increasing the number of APEC member jurisdictions involved will lead to increased participation by providers and investors, and improve regional market liquidity. As such, we support as many economies as possible joining the scheme at its launch and recommend a clear process for facilitating the inclusion of new economies.

We also recommend that the ARFP, as with other cross-border fund arrangements, be aligned as closely as possible with other regional and global fund management schemes to help facilitate growth and cross-border investment, including the Hong Kong-China mutual fund recognition programme and UCITS. Interoperability with other schemes would, as with the introduction of more economies into the ARFP, create greater economies of scale, reduce market fragmentation and improve financial market integration, while maximising choice for retail investors.



As momentum for the scheme continues to grow, we also reiterate our recommendation that there be an agreed mechanism between participating authorities (involving the private sector as necessary) to facilitate consistent implementation and resolve disagreements. We strongly believe that the creation of a public-private sector project body before the scheme's launch would play a valuable role in identifying and addressing issues that may affect early operability. Although its decisions and recommendations may not be binding, it would help to facilitate ongoing cross-border supervisory discussions, answer questions of interpretation and provide guidance. Other cross-border regulatory initiatives have utilised similar mechanisms very effectively: for example, we would recommend seeking to replicate the sort of discussion facilitated by the Task Force on Cross-Border Regulation established by the International Organisation of Securities Commissions in 2013; or a structure with the same objectives as the original advisory committees in the EU Lamfalussy process (e.g. Committee of European Banking Supervisors).

This sort of cross-border cooperation would help promote common understanding and interpretation of the passport rules, provide market participants with predictability and a level playing field, and help to avoid regulatory 'blind spots' between jurisdictions.

We remain happy to meet with any of the authorities involved to discuss the points raised in our response or to offer broader technical and commercial insight. Please do not hesitate to contact us should you have questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Daniel Trinder".

Daniel Trinder
Global Head of Regulatory Policy



Question feedback

Q1: The Working Group is seeking feedback on whether, in relation to each economy, there are adequate avenues through which an Operator is able to market a Passport Fund without obtaining a licence in that economy.

Given the importance of a strong and well regulated distribution network to the overall success of the ARFP, we would be grateful for further clarification on the licensing requirements that will enable a firm to become a “qualified distributor”. We support the principle that such licensing requirements should be fair and equitable, as well as being consistently interpreted and applied by different participating economies.

Q2: Is it appropriate to set the currency as USD for the purposes of the requirements, given possible fluctuations in currency?

We agree that it is appropriate to set the currency as USD for several reasons. Firstly, the USD is the most common book currency in international funds. Secondly, having a widely used, liquid currency as a reference will help to minimise variances in country-specific conversion of this threshold. Finally, using USD would help to minimise the need to revisit the stipulations as and when more countries join the ARFP scheme.

Q3: The prohibition of synthetic or physical short selling.

We see no problems with the Working Group’s current proposals, on the basis that the framework permits “using financial derivative instruments for hedging and netting off existing exposure.”

Q4: Should the single entity limit be 10% in all cases, as opposed to the graduated approach as drafted under section 30?

No comments.

Q5: Whether increasing the single entity limit to 15% for banks regulated under the Basel guidelines is preferable to having a separate limit for derivatives from other forms of counterparty exposure?

No comments.

Q6: Should the acceptable risk assessment apply even if the total of holdings that exceed the limit was less than 40%?

No comments.

Q7: The Working Group has taken the approach to disregard the offsetting effects of derivatives as this is a more conservative approach. Would this be unduly restrictive for industry?

No comments.

Q8: Would the proposed Passport Rules on the charging of performance fees be unduly burdensome? What impact, if any, would this have on current commercial arrangements?



We believe that regulations with respect to performance fees would benefit from further clarity. This charging of fees based on a Fund's returns is currently prohibited unless three subsections are complied with, including 47(1)(a), which states that the Operator cannot take "excessive risks" in relation to the Passport Fund. This term is open to interpretation and while we agree that "excessive risk" is to be avoided, such terminology must be defined with clear criteria to avoid misinterpretation. 47(1)(c) also inherently relies upon a common understanding of this term.

Q9: Would the proposed Passport Rules over suspension of redemptions be too restrictive? What impact, if any, would this have on current commercial arrangements?

No comments.

Q10: Should the value referred to in subsection 1b be market value or notional value of the equivalent position in the underlying asset, whichever is the more conservative?

We believe that market value is the most equitable way of determining valuation if the derivative is a listed derivative, such as a future or an option. This would be in keeping with best practice in other jurisdictions. If it is an OTC derivative, one could use a counterparty valuation as approved by the Fund's board, or use an alternative valuations provider as determined by the Fund.

Issues for further consideration

We have a number of additional comments on specific aspects of the operating framework, including the identification of other issues that we believe would benefit from further detail to help ensure common cross-border interpretation:

- **11 1(c) Delegation of Functions by Operator, p22:** This regulation states that a function of the operator can be delegated or sub-delegated if there are in place suitable processes to "monitor and control the activities of the delegate in relation to the delegated function." As drafted, this wording may be open to different interpretation by operators or authorities as to the extent of their involvement. We suggest that it would be helpful to clarify the intention, including perhaps by substituting the word 'oversee' for 'control' and using examples of best practice. This would avoid the suggestion that the operator would in effect manage on a day-to-day basis the activities which have been delegated, but rather the expectation is that there should be processes in place for the operator to require any problems identified by the monitoring are addressed on a timely basis.
- **13 (1) Consistency of definitions, p26:** To ensure consistency across participating jurisdictions, we recommend removing 'custodian' from the Philippine's qualification as a "responsible holding party". Other participating economies have not used the term "custodian" in this context.
- **53(1) Korea, approved valuation entity, p54:** We request further clarity on the approved valuation entity for Korea under 53(1), currently listed as "The Bond Assessment Company", including whether this company covers all securities and



whether this company takes responsibility similar to those of the Operator for the valuation of Korean funds.

- **Net Asset Value (definition), p57:** We would be grateful for further clarity and guidance on the calculation of the Net Asset Value of funds, including timeline expectations (the ARFP will cover four time zones), currency requirements and cross-border communication.
- **Foreign exchange (FX) execution practices:** We recommend that FX execution practices are considered in more detail by the Working Group, with a view to the publication of guidelines or confirmation that there are no FX execution restrictions in addition to existing regulations. For example, an Australian investor may be interested in investing in a Korean fund, denominated in KRW: it is important that both the home and host authorities agree in advance that the investor can freely convert AUD into KRW in a location of their choosing. We believe that this is another issue that could be considered in more detail by a public-private sector project group if established.