



Alternative Investment Management Association Singapore Branch

Primary Markets Conduct Division
Market Conduct Department
Monetary Authority of Singapore
10 Shenton Way
MAS Building
Singapore 079117

11 July 2014

Dear Sir/Madam

Consultation Paper: Arrangements for an Asia Region Funds Passport

Dear Sir/Madam

Many thanks for including AIMA Singapore in this important industry consultation. We strive to work closely with regulators and interested parties to promote the responsible use of alternate investors. We also look to provide a unified voice for our members in Singapore. Whilst some of our members might have qualifying funds, the majority will not be existing Collective Investment Scheme ("CIS") operators and will not be eligible for participation in this passport initiative. Nonetheless, we welcome and support the development of passport arrangements in Asia given the success of UCITS and the guiding objectives set out in the consultation paper.

AIMA understands and supports the proposal to initially restrict passport funds to those with 'relatively non-complex instruments' in order to build confidence in the system. However, like UCITS, we would encourage future consideration of alternative asset classes like hedge funds given APEC and the ARFPs objectives of providing investors with a more diverse range of investment opportunities, growing the pool of funds available and strengthening the capacity and international competitiveness of financial markets in the region.

Generally, we note that some investments guidelines are more restrictive as compared to the ASEAN fund passport framework and that others provides greater flexibility and scope. Ideally, ministers from the relevant jurisdictions would review the ASEAN fund passport framework in light of this consultation paper and align the limits for consistency subject to their safeguarding of investors' best interests.

AIMA's responses to specific questions raised are attached in the appendix to this document for your consideration and feedback.

Regards,

Ho Han Ming
AIMA Singapore
Chairman on behalf of the AIMA Singapore Regulatory Committee

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Appendix 1

Responses to consultation questions:

| Basic Eligibility | | |
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| Types of CIS | | |
| Question | | Response |
| Q3.1 | Should there be any restrictions on the legal form of passport funds in some or all economies such as for example an exclusion of CIS that are partnerships? If so why? | There should not be restrictions on the legal form of passport funds as each country's regulation may have already prescribed the fund's legal structure under their respective fund regime. To add, having no restrictions provides flexibility to a CIS operator to seek the best structure available that may be in the best interest of the investors. |
| Q3.2 | Would the restriction on naming and promotion in relation to MMFs give rise to any practical problems? If so please explain. | No issues with the MMFs naming convention. However, proper and consistent guidance on the naming convention of a fund should be extended all fund and not limited to MMFs. Guidelines on naming of funds should also be consistent and clear amongst participating countries. As with any passport fund authorized promotional activities may differ in each jurisdiction. As such there should be greater effort to standardize promotional regulations across participating markets. |
| Q3.3 | To what extent are offers likely to be made of interests in a passport fund that is an ETF in its home economy but not able to be traded on a financial market in the host economy? | No specific comment. |
| Q3.4 | There is a risk of retail investors misunderstanding how they can realise their investment in an ETF where the interests are not traded on a local financial market. Is there reason for concern that this risk is not sufficiently addressed by host economy laws and regulations about disclosure and distribution? If so please explain. | No specific comment. |
| Offer in the home economy | | |
| Q3.5 | Would the requirement for an offer in the home economy give rise to any practical problems? If so please explain. | We support the requirement for an offer in the home economy as new funds would be constituted in the same manner as required in the home jurisdiction if they would like to passport under ARFP. |

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| Q3.6 | Would the requirement for an offer in the home economy promote investor confidence in the effectiveness of supervision of passport funds by the home regulator? What other possible measures could be applied? | We agree as the investor could be reassured that the CIS Operator and the fund is subjected to supervision of the home regulator and the investors' interest is protected. The commission might consider creating a database of qualifying funds i.e. those with regulatory approval. This might provide additional confidence. |
| Licensing of the Passport Fund Operator | | |
| Operational requirements | | |
| Q3.7 | Is the requirement for an audit of certain home economy laws and regulations related to the passport fund operational requirements sufficient to ensure that passport funds are operated in accordance with the prescribed standards? | We largely defer to the Audit Industry on these questions but note that CIS operators are already subjected to annual external audit as well as fund audit. Any additional audit requirement would impose costs on the CIS operator and the fund. It is also possible that the bar be set too high, creating a barrier to entry for smaller fund managers which could in turn stifle investment choice, a key objective of this passport initiative. |
| Q3.8 | Are there any practical problems associated with the <u>compliance audit rule</u> ? In particular are there any particular aspects that would be burdensome or inappropriate to audit? | Again, we largely defer to the Audit Industry. However CIS operators are licensed entities subjected to home regulator's supervisory and external audits. Would it be practical for Passport member economies to rely on the home regulator to monitor the CIS operator, rather than imposing additional compliance audit conditions? |
| Q3.9 | Would it be clearer or more practical to instead require an audit of whether the passport fund operational requirements are being met? | We defer to the Audit Industry but similar 'audits' exist today e.g. ISAE 3042. These could be evolved to provide the operational assurance necessary. |
| Track Record of Operator | | |
| Q3.10 | Is this restriction on counting the experience of an operator or related party under different control sufficient to ensure that the operator has the capability to act as a passport fund operator? Would the restriction give rise to any practical problems? If the experience of the operator is permitted to be counted despite a change in control because it meets the requirements about continuity of staffing and decision making processes, should there be additional documentation requirements? If so please explain. | To a certain extent, the assessment seems reasonable in the simple examples given. In the case of example 3, additional consideration should be given to determine what is deemed relevant experience, eg, fund management or operational aspect. In the example 3, we would suggest obtaining a letter of undertaking from Operator A that the experience is deemed relevant to Operator B and the practices would be adopted. In reality, the situation may be not be as straight forward as the examples given, CIS |

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| | | Operator should be allowed open discussion with the regulators to assess the situation on a case-by-case basis. |
| Q3.11 | Should operators be allowed to count experience operating other types of retail investment schemes (for example, pension funds) as the requirement is currently drafted? Are there other types of experience which should be allowed to be counted? | No specific comment. |
| Qualification of Officers of the Operator | | |
| Q3.12 | Are the qualification standards appropriate and sufficient to ensure the ability of the passport fund operator to perform its functions? | The suggested qualifications are appropriate. Under Singapore CIS, approved Hedge Funds are already required to have at least two executives who each have at least five years of experience in the management of hedge funds. |
| Q3.13 | Should they apply to any other persons involved in the operation of a passport fund? | As per existing CIS regulations, qualification requirements should also apply to the sub-manager. |
| Q3.14 | Should the proposed requirements for there being a qualified person who is an officer or employee of the operator apply to ensure this important function is done in the organization directly regulated as a passport fund operator? What if any practical problems would arise? | No specific comment. |
| Capital requirements | | |
| Q3.15 | The European Securities and Markets Authority (ESMA) in its technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive recommended allowing a degree of substitutability between professional indemnity insurance and capital to cover professional liability risks. Should a passport fund operator be able to substitute for capital (in whole or in part) the amount of cover provided by holding professional indemnity insurance which meets specified requirements given that a purpose of the requirement for capital for passport fund operators is to address professional liability risk? | The ASEAN fund passport allows professional indemnity insurance to replace additional capital if the AUM of the CIS operation is greater than USD500m. It would be in the interests of members if PII could be treated as permissible capital. |
| Q3.16 | "If professional indemnity insurance is permitted as a substitute what requirements should apply? Should there be minimum requirements concerning the terms and level of coverage of the insurance policy and the insurance provider? For example: Requirements on the terms and level of coverage: (a) The policy must have an initial term of no less than one year. (b) Coverage must include liabilities of the | In lieu of a PII, a Letter of Undertaking with liability equal to or exceeding the minimum PII coverage from the CIS Operator's parent company should be considered. The parent company must be of satisfactory financial standing. Alternative forms of PII to be considered if the FMC assesses that the interests of investors are not undermined, e.g. group PII. |

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| | <p>fund's directors, officers or staff of third parties for whom the fund has vicarious liability.</p> <p>Requirements concerning insurance provider:</p> <p>(a) The insurance providers a third party entity and subject to prudential regulation and ongoing supervision.</p> <p>(b) The fund manager must assess that the insurance provider has sufficient financial strength with regard to its ability to pay claims.</p> <p>Are there any other set of requirements that need to be applied?"</p> | |
| Operation of the Fund Passport | | |
| Independent oversight | | |
| Q3.17 | <p>Are there other means to ensure the policy objective of independent oversight ("IO") is met? If so please explain these other means and why they should be permitted.</p> | <p>Currently for Unit Trusts set up in Singapore, the Trustee acts as an independent party, performing separate monitoring of the funds and acts in the interests of the unit holders. Would the current role of the Trustee be deemed as sufficient oversight under the ARFP? If not, we would like more clarity on the expectation on this independent oversight.</p> |
| Compliance Audit | | |
| Q3.18 | <p>Should an independent oversight entity be permitted to conduct a compliance audit?</p> | <p>The independent oversight entity, which is mandatory according to page 21 of the consultation paper, should be permitted to appoint a separate independent entity, such as a law firm or a compliance consultant for example, to perform the compliance audit in order to carry out its obligations and duties. The entity required to be perform such audits should not be limited to the CIS's financial auditors or other accounting/audit firm. Note however that any additional audit that is independent of the existing audit done on the fund will lead to additional expenses to the fund and resources to the manager.</p> |
| Q3.19 | <p>Should an independent oversight entity be permitted to self-certify its own compliance in respect of its own obligations under the passport rules instead of arranging its compliance to be audited in any circumstances? If so, under what circumstances should such self-certification be allowed and how can the potential conflict of interests be satisfactorily mitigated?</p> | <p>Self certification is practical but in order to avoid conflict of interest, the certification could be backed by some form of 'assurance' by an independent function, or body. As a minimum this should be from an internal, independent function e.g. Compliance, Operational Risk, or Internal Audit.</p> |

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| Q3.20 | Would there be any practical difficulties in an auditor providing the opinion proposed? If so please elaborate and identify any alternative measures or alternative form of report that would sufficiently address the policy objective of ensuring compliance through independent checking where reasonable (for example, a review engagement providing negative assurance or an agreed upon procedures report from the auditor). | Practical difficulties will increase with the level of positive assurance required. Similarly a higher level of assurance will increase the cost of audit for the CIS operator and fund. |
| Q3.21 | Is this the most appropriate approach to ensure there are adequate standards which are applied consistently? | Yes this is practical subject to the solution adopted being practical and economic given the objectives of the passport scheme. Naturally, it would be preferable for a consistent approach to be adopted across all home regulators. |
| Investment Restrictions | | |
| Q3.22 | Do any of the permitted assets (for example, depository receipts over gold) lack appropriate qualities of liquidity and reliable valuation and therefore should not be permitted or should be further restricted in keeping with the object of passport funds being relatively non-complex investments while enabling passport funds to be offered that will attract investor interest? If so what should be excluded or what restrictions should apply? | Whilst it is recognized that depository receipts are relatively illiquid we would prefer not to unnecessarily restrict asset classes. We would suggest applying an investment restriction or limit on illiquid assets as an alternative. We also note that unlike UCITS there is no provision should a small amount of assets not meet the criteria. What for example happens if a previously transferable security suddenly becomes non-transferable? |
| Q3.23 | Are there any other assets that have appropriate qualities of liquidity and reliable valuation that should be permitted consistent with the object of passport funds being relatively non-complex investments while enabling passport funds to be offered that will attract investor interest? If so what assets should be permitted and within what limits? | See above. |
| Derivatives | | |
| Q3.24 | To what extent does Table 2 in Schedule B appropriately measure exposure of a passport fund? To the extent it does not, what other measuring standards should apply? | This is consistent with existing requirements. |
| Q3.25 | To what extent does the calculations required by Schedule A, including in respect of what collateral may be considered; appropriately measure the maximum potential loss of a passport fund due to a counterparty failing? To the extent it does not, what other measuring standards should apply? | This is consistent with existing requirements |

| Delegation | | |
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| Q3.26 | Are these eligibility requirements sufficient to ensure that the delegates have the necessary experience to perform the delegated functions and are subject to appropriate regulatory oversight? If not, what other measures should apply? | We agree with the general requirements with the exception of having the delegate to meet the requirements for the eligibility of operators under this framework relating to capital, experience (including of its chief executive officer and executive directors), funds under management (as at the time of their appointment in relation to the passport fund) and good standing. Not too sure if this condition was intended to limit the delegate selection pool to those participating in framework and disallowed investment experts from elsewhere. If not, we would suggest some flexibility on this condition. Also, we would like to suggest that there could some form of exemption provided if the delegate is within the same group. |
| Q3.27 | Is it appropriate to apply the same requirements as apply to an operator to a delegate in relation to the experience of its chief executive officer and executive directors? If not, why not? | The delegate should be reputable and supervised by an acceptable financial supervisory authority. It may be impractical to the dictate the makeup of the corporate governance of the delegate who is not participating in ARFP and could be subjected to other regulations. |
| Financial reporting and audit | | |
| Q3.28 | Is it appropriate for a host regulator to require financial statements and audit reports to be translated to an official language of the host economy? If not, why not? | We agree that the translated reports could be prepared if required. However, we are mindful that of the quality of translated version and the cost involved. We are concerned that the meaning of the audit reports could be “lost in translation” depending on the difference in auditing practices between the host and home jurisdictions. |
| 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? | With regards to Distribution and Intermediaries, we agreed to refer to host rules. However, if there is a need for additional approval or licensing at each host country, we would suggest some form of exemption should be considered as part of the fund passporting rules to allow flexible access to the host market and reduce compliance monitoring cost. If this is not possible, more guidance should be provided by host country on cross |

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| | | <p>border fund distribution and marketing activities.</p> <p>With regards to Disclosure and Marketing, we propose that some form of standardized, consolidated disclosure template (e.g. Product Highlights Sheet (PHS) in Singapore or Key Investment Information Document (KIID) in UK) for marketing materials to set out in the framework to ensure that information received by investor in each member country is consistent, transparent and fair. This also allow CIS Operator efficiency and enjoy economies of scale, thereby keeping the fund expenses in low</p> <p>With regards to Complaints, we agree with the proposed approach.</p> |
| 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? | Whilst we generally agree with the approach we would urge that where possible, the process be simplified and standardised. |
| 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? | Please see comments made separately in relevant sections. |
| Q3.32 | What impact would the proposed approach have on competitiveness and investor confidence? | We think that this initiative would encourage the industry to become more competitive in their product offering as well as improve the economy of scale for CIS Operators. Investor confidence in the member countries will gain over time as they experience the services provided by offshore fund providers and that the information they received is consistent between the member countries. |
| Q3.33 | For prospective passport fund operators or current and prospective fund managers, what impact would the proposed approach have on your business? If the proposed approach would result in an increase or reduction in compliance or other costs, please quantify. | There will definitely be increased compliance costs as we need to monitor and comply with the host economies' marketing and distribution regulations if we want to distribute our funds outside of home economy. The audit and independent compliance audit requirement on passport rules regardless of what form it takes will also increase the cost paid to external auditors. As much as possible, we hope |

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| | | that the approach could be simple and standardize so that CIS operator could gain economies of scale and keeping the cost in check. |
| Q3.34 | Do you require more information about the proposed approach? If so, what? | We need more information on various aspects including tax, how funds are being taxed in member countries. For example, will there be any withholding tax on income and capital gains? This would help assess if the retail investors decisions are performance related or tax driven. |
| Q3.35 | Are there any additional requirements you would suggest? If so, what are the rules and why? | With regards to the investment guidelines, we note that some investments guidelines are more restricted than the ASEAN fund passport framework, likewise, some limits provides more flexibility. We would like to urge the ministers to review the ASEAN fund passport framework investment guidelines and possibly align the limits for consistency subject to their safeguarding of investors' best interests. |
| Q3.36 | Do you have questions about how the passport will work that are not addressed in the proposed framework? What are they? | We would request for more information on the conditions of the Credit Risk Check on Pg 27 of the document. |
| Regulatory Functions | | |
| Registration & Assessment | | |
| Q4.1 | Is the proposed registration and assessment process operationally practicable? | Yes, the notification framework seems more practical than the assessment framework. An disclosure requirement should be standardised. There should not be additional host requirements as this may create additional requirements which results in the process of the passport regime becoming cumbersome. The ideal is one offer document for all participating countries. Clear guidelines should be provided on the fund to avoid rejection by host countries as it is, the fund invests in plain vanilla instruments. The 21 day review period is a reasonable time. |
| Q4.2 | If not, what changes would you propose? What impact would the proposed approach have on competitiveness and ensuring investor confidence? | No specific comment. |



| Supervision & Enforcement | | |
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| Civil & Criminal Actions | | |
| Q4.3 | Will members of passport funds have sufficient ability to seek compensation in the event of wrongdoing by passport funds? Is it appropriate to require the constitutive documents of a passport fund to provide that disputes between a member of the passport fund and the passport fund operator are to be heard by a court in the economy of the member (with the exemptions discussed above)? Are there practical or legal difficulties with these proposals? | No specific comment. |
| Others | | |
| Q4.4 | Are the proposed supervision and enforcement arrangements operationally practicable and sufficient? | No comment |
| Q4.5 | Please detail any other matters you consider relevant to the supervision and enforcement arrangements that need to be reflected in the passport arrangements. | The text might benefit from a clear definition of ‘security’ as while this may be a well understood definition, such reference to “security” differs between markets. |