

MEMO# 28259

July 10, 2014

Comment Letter - APEC Consultation Paper: Arrangements for an Asia Region Fund Passport

[28259]

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TO: ETF ADVISORY COMMITTEE No. 14-14
ICI GLOBAL ASIA PACIFIC CHAPTER No. 6-14
ICI GLOBAL ASIA PACIFIC FUND PASSPORTS TASK FORCE
ICI GLOBAL ASIA PACIFIC SENIOR LEADERS No. 6-14
ICI GLOBAL EXCHANGE TRADED FUNDS COMMITTEE No. 3-14
ICI GLOBAL STEERING COMMITTEE No. 9-14
ICI GLOBAL TAX COMMITTEE No. 14-14
INTERNATIONAL COMMITTEE No. 21-14
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 10-14
TAX COMMITTEE No. 22-14 RE: COMMENT LETTER - APEC CONSULTATION PAPER:
ARRANGEMENTS FOR AN ASIA REGION FUND PASSPORT

On 16 April 2014 six Asia-Pacific Economic Cooperation (APEC) member governments released a consultation paper (CP) to seek views on the proposed implementation arrangements for the Asia Region Funds Passport (ARFP). [\[1\]](#) ICI Global filed a comment letter on 10 July 2014 in response to the CP (attached).

The comment letter applauded the efforts of the APEC members to develop the proposed arrangements for the ARFP. The letter contained recommendations designed to improve the utility of the ARFP framework. A summary of the recommendations is below.

Summary of recommendations

Eligibility

- At a minimum, the following fund structures should be permitted: corporate, contractual and trust.
- A fund should be an eligible Passport Fund if it is eligible to be offered to the public in the home economy (e.g., made available on home economy website).
- Regulators should reconcile any incompatibilities in home and host economy rules

related to money market funds.

- We support improving disclosure to strengthen investor understanding of the purchase and sale of Exchange Traded Funds (ETFs). While we support finding ways to strengthen the ability of ETF investors to sell their shares, we do not support the proposal to ensure shares of the ETF are redeemable when trading has been suspended for more than five days. We believe such an approach presents both practical and operational problems and could potentially harm investors and exacerbate market disruptions.

Fund Operator

We recommend permitting additional ways in which the fund operator can meet the experience qualifications. We believe that, given the overall strength of the Passport framework, more flexibility in qualifications can be provided without compromising the goal of ensuring there is a responsible fund operator. The funds under management threshold also should include discretionary and separately managed accounts that are managed similarly to the funds that are eligible for the threshold. We are concerned the capital requirements may be too high when compared with member economy requirements and therefore unnecessarily restrict the number of eligible operators.

Passport Fund

- Custody Arrangements. Consistent with rules in certain member economies, we recommend considering conditions under which a Passport Fund can use a custodian outside the home economy, such as limiting eligibility to certain financial institutions.
- Independent Oversight. We support the concept of independent oversight but recommend more flexibility in its implementation to better accommodate different fund structures (e.g., contractual or trust) and local rules which may impose certain oversight responsibilities on specific entities or otherwise affect how oversight is conducted.
- Compliance Opinion. We comment that obtaining an audit opinion on compliance with certain home economy rules and the Passport rules could be difficult and expensive. The cost could be a competitive disadvantage when compared with local funds, too. We recommend examining how existing local audit requirements could be used, and adapted as needed, to meet this proposed Passport rule so only one audit is needed. We also comment that an independent oversight entity could have a role in an annual review. Passport Funds could have the option of seeking an audit opinion or could utilise an independent oversight entity (which could use internal and external auditors, compliance personnel or other experts in the performance of this review). We believe allowing either an opinion or a compliance review by an independent oversight entity equally fulfils the goal of ensuring strong compliance in Passport Funds.
- Investment Restrictions. We recommend certain changes to the investment restriction provisions to enable more efficient portfolio management, including to better hedge risk exposures for the benefit of investors. We also recommend more consideration of how the proposed investment restrictions compare to current member economy investment restrictions (e.g., group and single entity limits, investments in other CIS, derivatives and securities lending). Generally this comparison should ensure that a reasonable and comparable set of investment restrictions are applied under the Passport as compared to local funds.
- Delegation. We recommend other approaches for ensuring operators can enter into reasonable delegation arrangements that allow them to access important expertise

wherever located – in or outside a member economy. Along with notice to supervisors of a delegation, delegates could be required to be licensed for asset management in their local jurisdiction. Operators also could be required to have written agreements with delegates and engage in specified due diligence.

- Other Issues - Share Classes. To facilitate distribution, particularly to accommodate the existence of different currencies in the region, the Passport rules should permit multi-class fund structures.

Dealing with Investors – Marketing and Disclosure

We recommend considering how arrangements for marketing in host economies can be improved to facilitate more efficient distribution of Passport Funds. Consideration must be given to the substantial burdens and costs that licensing in multiple host economies would entail (e.g., “simplified” licensing for entities marketing Passport Funds). In the future, we recommend that Passport members work together on a common disclosure document to avoid the problems posed when the same fund must use different documents in each host economy to comply with local laws. Such a disclosure document also would have to be comparable to host economy disclosure documents so investors receive the “same level” of disclosure.

Implementation

We recommend the formation of a college or group of representatives from member economies to monitor Passport developments and to help develop solutions when areas of divergence in the implementation of the Passport arise among member economies.

Tax

Tax issues present crucial challenges for funds distributed cross-border. Three or more jurisdictions – the fund’s domicile, the investors’ tax residencies and the countries in which the fund invests – must be examined. The tax issues that must be addressed for a Passport Fund to be competitively viable across all Passport economies involve tax neutrality, tax certainty and tax administration harmonization. To ensure that tax issues do not erode the benefits of investing in a Passport Fund, we recommend that the Passport member economies work together to identify and address tax issues.

- We have identified some specific issues, discussed below, involving tax rules of certain APEC member jurisdictions that are not tax neutral; these laws must be modified for the Passport to be successful.
- For other issues, administrative guidance – to eliminate tax uncertainty and overly-burdensome or inconsistent procedures that can prevent or diminish cross-border investments – will be necessary.

Next Steps

The participating member economies are planning to finalise the arrangements for the ARFP in late 2014 or early 2015. Implementation of these arrangements domestically will then occur. The CP envisages that domestic arrangements to allow funds to begin to use the passport should be in place by 2016.

Giles Swan
Director of Global Funds Policy - ICI Global

[Attachment](#)

endnotes

[1]

<http://fundspassport.apec.org/files/2014/04/20140411-Consultation-Paper-on-the-Passport-Arrangements-FINAL.pdf>

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