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Handbook for Operators of CIS under the ASEAN CIS Framework

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TO: ETF ADVISORY COMMITTEE No. 15-14
ICI GLOBAL ASIA PACIFIC CHAPTER No. 8-14
ICI GLOBAL ASIA PACIFIC FUND PASSPORTS TASK FORCE
ICI GLOBAL ASIA PACIFIC SENIOR LEADERS No. 7-14
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ICI GLOBAL STEERING COMMITTEE No. 12-14
ICI GLOBAL TAX COMMITTEE No. 16-14
INTERNATIONAL COMMITTEE No. 27-14
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 14-14
TAX COMMITTEE No. 27-14 RE: HANDBOOK FOR OPERATORS OF CIS UNDER THE ASEAN CIS FRAMEWORK

On 25 August 2014, the ASEAN Capital Markets Forum (“ACMF”) announced that the ASEAN CIS Framework for the cross-border offering of collective investment schemes (“CIS”) had become operational in Malaysia, Singapore and Thailand (“member jurisdictions”). [\[1\]](#) The announcement was accompanied by the publication of a Handbook for CIS Operators of ASEAN CIS (“the Handbook”). [\[2\]](#) This memo provides background to the ASEAN CIS Framework and a summary of the recent developments, including the new Handbook.

Background

The ASEAN CIS Framework (“the Framework”) is intended to allow “fund managers operating in a member jurisdiction to offer CIS constituted and authorised in that jurisdiction to retail investors in other member jurisdictions under a streamlined authorisation process.” At a high level, the Framework is a component of a regional capital market integration plan endorsed ASEAN Finance Ministers in 2009. The implementation plan [\[3\]](#) and associated “blueprint” set out a broad general framework to strengthen ASEAN capital market development and integration by 2015. [\[4\]](#)

A Memorandum of Understanding (MoU) for the ASEAN CIS Framework was signed in October 2013 by the Securities Commission of Malaysia, the Monetary Authority of Singapore and the Securities and Exchange Commission, Thailand. [\[5\]](#) Alongside the MoU, a set of common standards “designed to ensure that the fund managers who tap on the

Framework have the necessary expertise and experience, and schemes offered under the Framework are managed based on industry best practices” was also published. [6] The issuance of a handbook “to provide guidance to fund managers on various administrative and procedural matters including the application procedures, the use of local distributors in the offering process, and the procedures for remittance of funds” was also envisaged in due course.

Handbook for CIS Operators of ASEAN CISs

On 25 August 2014 a Handbook for CIS Operators of ASEAN CISs was published. The Handbook is aimed at CIS Operators who are seeking to offer their CIS under the Framework. It provides guidance in the following areas:

- the steps that CIS Operators should take to obtain approval from the Home and Host Regulators for the cross-border offering of their funds in a Host Jurisdiction;
- the factors that the Home and Host Regulators will consider when assessing the applications;
- the legislative and regulatory requirements of the participating jurisdictions which are applicable to the offer of an ASEAN CIS in the respective jurisdiction; and
- the manner in which the funds may be distributed in the relevant participating jurisdiction.

The main components of the handbook guidance are summarised below.

Procedural matters

Section A of the Handbook outlines the process through which an ASEAN CIS can seek approval to be offered under the Framework. In simple terms, this is a two-stage process. First, the Home Regulator must: (a) approve the CIS for public offer in the Home Jurisdiction; and (b) assess whether the CIS is suitable to be an ASEAN CIS. Second, the Host Regulator must approve the offer of the CIS in the Host Jurisdiction.

The Handbook specifies various aspects of the approval process including the documents to be submitted to the Host Regulator, the criteria for assessing the application and the rights of refusal. The following aspects of the handbook guidance are of particular note:

- Any CIS seeking approval under the Framework must be approved to be offered to the public in its Home Jurisdiction;
- In considering whether a CIS is suitable to be an ASEAN CIS, the Home Regulator will assess the CIS Operator against the eligibility criteria, custody and oversight arrangements, and investment restrictions specified in the Standards of Qualifying CIS (see annex for summary);
- As part of the application for approval sent to a Host Regulator, the ASEAN CIS must also provide “an undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts ... which must be signed by the Qualifying CIS Operator and the trustee/fund supervisor” (the format of the undertaking is specified in the handbook guidance);
- Documents submitted to the Host Regulator for approval, along with offering document/prospectus must be in, or translated into, English and may also be required to be translated into another official language(s) of the Host Jurisdiction;
- The Host Regulator will review the offering document/prospectus for compliance with the Host Jurisdiction’s disclosure requirements over a timeframe for review that will be subject to the Host Regulator’s discretion (expected timeframes are specified in the

Handbook);

- The Host Regulator retains the right to decline an application from a Qualifying CIS Operator under a non-exhaustive list of circumstances specified in the Handbook;
- The offering of ASEAN CIS to the public in a Host Jurisdiction must be done through local distributors who are local intermediaries licensed or regulated in that Host Jurisdiction;
- Host Regulators may also require local representatives to be appointed and regulated (or at least acceptable to the Regulator), whom in turn may be responsible for various administrative functions and representing the Qualifying CIS Operator in any dispute resolution schemes.

On-going notification and disclosure requirements

The handbook guidance contains four sets of requirements relating to the notifications and reports that must be provided to Home and Host Regulators including the report of an annual compliance audit. The following aspects of the handbook guidance are of particular note:

- An overarching requirement is imposed on Qualifying CIS Operators to keep offering documents/prospectuses for ASEAN CIS accurate and up-to-date;
- Updated or supplementary filings of an offering document/prospectus that is made to the Home Regulator must be provided to the Host Regulator without delay, unless this is not required by the laws and regulations of the Host Jurisdiction;
- An ASEAN CIS is subject to any on-going reporting requirements in a Host Jurisdiction into which it is offered (e.g. the issuance of annual or semi-annual reports);
- A Qualifying CIS Operator is required to inform both the Home and Host Regulators of significant changes to the Qualifying CIS Operator or the ASEAN CIS and may be required to notify investors of changes. Examples of the changes that would trigger this requirement include material events that could adversely impact the ASEAN CIS or the Qualifying CIS Operator, or enforcement or regulatory action or sanction that has been or may be taken by the Home Regulator or the Host Regulator against the ASEAN CIS or the Qualifying CIS Operator;
- A Qualifying CIS Operator is required to appoint an independent auditor to conduct an annual audit of the Qualifying CIS Operator covering, at a minimum, the compliance with the Standards of Qualifying CIS. The Qualifying CIS Operator is required to provide the auditor's report to the trustee/fund supervisor, the Home Regulator and the Host Regulator.

National regulations regarding the approval process, disclosure and other requirements

The handbook guidance underscores the importance of Qualifying CIS Operators familiarising themselves with the applicable laws and regulations of the jurisdictions in which they intend to offer ASEAN CIS. Detailed information on the relevant laws and regulations of the three participating jurisdictions (Malaysia, Singapore and Thailand) is contained in the appendix to the Handbook. In some cases, for instance in respect of Singapore, specific provisions have already been incorporated into regulatory codes or rulebooks. [\[7\]](#)

Annex - Summary of the Standards of Qualifying CIS under the

ASEAN CIS Framework

Source: Press Release, ACMF announced the Framework for the cross-border offering of ASEAN CIS (available from

http://www.theacmf.org/ACMF/webcontent.php?content_id=00065

Eligibility Criteria for CIS Operators

Experience in managing CIS

- CIS operator must have a track record in managing CIS of at least 5 years.
- CIS operator, including its related companies, must have assets under management (AUM) of at least USD 500 million.

Minimum Capital Requirements

- CIS operator must maintain shareholders' equity of at least USD 1 million, and maintain additional capital if its AUM exceeds USD 500 million.

Qualification of Personnel

- CEO must have a minimum of 10 years of experience in financial or capital markets.
- Directors must have a minimum of 5 years of experience, and in the case of an executive director, such experience must be in financial or capital markets.
- Key executive officers and fund managers must also meet minimum competency requirements and have adequate experience in financial or capital markets.

Independent Oversight

Trustee / Fund Supervisor

- The trustee / fund supervisor must be independent of the CIS operator.

Independent auditor

- CIS operator is required to appoint an independent auditor to conduct an annual compliance audit of the CIS operator.

Investment Restrictions

Permissible investments

- ASEAN CIS is only permitted to invest in transferable securities (i.e. equities and bonds), money market instruments, deposits, other CIS, and financial derivatives.
- Permissible investments are subject to certain eligibility requirements, for example, requirements on liquidity and valuation.

Investment limits

- Investments in transferable securities or money market instruments issued by a single issuer must not exceed 10% of the net assets of CIS (the "Single Entity Limit").
- The Single Entity Limit is raised to 35% in the case of government debt securities with a credit rating of at least investment grade.
- The Single Entity Limit is lowered to 5% in the case of non-investment grade, unrated, or unlisted securities. In aggregate, such investments must not exceed 15% of the net

assets of CIS.

Use of financial derivatives

- Investment in financial derivative instruments is permitted provided that the global exposure to financial derivatives (computed under the commitment approach) does not exceed 20% of the net assets of CIS.
- The maximum exposure of CIS to single counterparty of an OTC financial derivative must not exceed 10% of its net assets where the counterparty has a credit rating of investment grade. The counterparty limit is lowered to 5% in any other cases.
- In addition, the CIS' exposure to the underlying assets shall not exceed the investment limits stated above.

Disclosure Requirements

- The offer of ASEAN CIS in any member jurisdiction must be made in compliance with the disclosure requirements of that jurisdiction.

Marketing and Distribution

- The marketing and distribution of an ASEAN CIS in any member jurisdiction must be carried out by intermediaries that are suitably licensed in that jurisdiction.

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endnotes

[1] Press Release ACMF launched framework for the cross-border offering of ASEAN CIS, 25 August 2014 (available from http://www.theacmf.org/ACMF/webcontent.php?content_id=00067)

[2] Handbook for CIS Operators of ASEAN CISs, 25 August 2014 (available from http://www.theacmf.org/ACMF/upload/asean_cis_handbook.pdf)

[3] ACMF Initiatives, Implementation Plan (available from http://www.theacmf.org/ACMF/webcontent.php?content_id=00014)

[4] ASEAN Economic Community Blueprint (available from www.asean.org/archive/5187-10.pdf)

[5] Press Release, ACMF announced the Framework for the cross-border offering of ASEAN CIS (available from http://www.theacmf.org/ACMF/webcontent.php?content_id=00065)

[6] Standards of Qualifying CIS (available from http://www.theacmf.org/ACMF/upload/standards_of_qualifying_cis.pdf)

[7] Chapter 10, Monetary Authority of Singapore, Code on Collective Investment Schemes (available from <http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Securities%20Futures%20and%20Fund%20Management/Regulations%20Guidance%20and%20Licensing/Codes/CIS%20CODE%20%2025%20A>)

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