

Financial Regulation in Asia – A New Model for Regional Cooperation Discussion Paper on Asia Region Funds Passport (ARFP) Initiative

Background

The Asia Region Funds Passport (ARFP) Initiative grew out of a recommendation in the report of the Australian Financial Centre (known as the Johnson Report). The concept was subsequently introduced as an exploratory policy initiative within the APEC Finance Ministers' Process. On 29 September 2013, four economies - Australia, New Zealand, Korea and Singapore – signed a Statement of Intent and a Framework Document, under which a framework was agreed to pilot the initiative.¹

As noted on APEC's website,² the initiative "will enable operators of collective investment schemes based in passport member economies to offer their products to investors in other passport member economies, subject to a streamlined regulatory process." For example, an Australian fund manager would be able to distribute an Australian-domiciled fund in any of the other passport member countries. The website further notes that the "Passport represents a practical step towards better integrated financial markets in the APEC region."

The Framework Document and Relevance to Our Project

The Framework Document provides that an economy that wishes to become a passport member economy must meet certain criteria, including that it is a signatory to Appendix A of the International Organization of Securities Commissions (IOSCO) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information ("IOSCO MMoU"). In addition, it must have been previously assessed as having broadly implemented the relevant IOSCO Principles on enforcement, cooperation and collective investment schemes³ or, alternatively, satisfy certain other criteria.

Paragraph 24 of the Framework Document provides as follows

24 *The operation of the Passport will require heightened cooperation, consultation, exchange of information and mutual assistance between the Passport economy regulators. The Passport economy regulators can determine principles and procedures for cooperation between themselves on supervision, investigation and enforcement matters.*

Paragraphs 26 to 28 deal with governance and provide that a Joint Committee, with representatives from all passport member economies, will oversee the operation of the passport.

¹ http://www.apec.org/~media/Files/Groups/FMP/20130923_ARFP_SOI_Signed.pdf.

² <http://www.apec.org/Groups/Other-Groups/Finance-Ministers-Process.aspx>.

³ These are contained in the IOSCO Objectives and Principles of Securities Regulation: <http://www.compliance-exchange.com/governance/library/ioscoprinciples2010.pdf>.

The above overlaps with the broad aim of our research project, which is to investigate the following:

- The role of regional cooperation in the development of financial regulation in Asia;
- Whether greater regional cooperation is required in the area of financial regulation; and
- Whether the existing regional bodies or mechanisms should be strengthened or reformed for the purpose of coordinating information-sharing between the financial regulators, overseeing developments in financial markets and identifying and recommending appropriate regulatory responses.

Preliminary observations

In establishing a regional framework, it is expected that the ARFP would seek to achieve the same benefits as the UCITS arrangements in the EU. However, although the ARFP initiative has been inspired by UCITS, there are some key differences, including (for our purposes) the fact that there is no supra-national regulatory framework in Asia that can impose binding rules on the relevant countries. As a result, it is necessary to establish a multilateral framework between the member countries to facilitate cooperation, consultation, information-exchange and mutual assistance.

Another example of a passport arrangement in which the participating countries are not subject to a supra-national regulatory framework is the arrangements entered into pursuant to the EU Directive on Alternative Investment Fund Managers (AIFM). Issued in 2011, this makes provision for non-EU funds to be managed by EU fund managers and non-EU fund managers, and for non-EU funds to be marketed to professional investors in the EU.

Similar to the arrangements that would be required for the ARFP, the AIFM Directive requires cooperation arrangements to be in place between the EU and the regulator in the other country (e.g. the country in which the non-EU fund manager is established and/or the country in which the non-EU fund is domiciled). Accordingly, the EU has entered into a number of regulatory cooperation memoranda of understanding with non-EU jurisdictions, including Australia.⁴

However, these arrangements are essentially bilateral in nature (i.e. they deal with the bilateral arrangements in place between the EU and each of the other non-EU jurisdictions). In the case of the ARFP, it will be necessary to have multilateral cooperation between the four member economies.

Questions for discussion

- Does the IOSCO MMoU provide an adequate framework for this purpose?⁵

⁴ For general information on these arrangements, see http://www.esma.europa.eu/system/files/2013-998_guidelines_on_the_model_mous_concerning_aifmd.pdf.

⁵ Although the IOSCO MMoU provides that the “Authorities will consult periodically with each other regarding this Memorandum of Understanding about matters of common concern...” and therefore provides a

- Are there other multilateral arrangements that offer experience in this regard?⁶
- What factors will influence the choice of frameworks and mechanisms for achieving regulatory cooperation on the ARFP Initiative and how will they influence this choice (e.g. legal, regulatory, political and financial factors)?

framework within which authorities can consult on a multilateral basis, there is no mechanism for multilateral cooperation in relation to an initiative such as a funds passport.

⁶ For example, the Memorandum of Understanding on the Co-ordinated Regulation, Supervision and Oversight of the Euronext Group (http://www.fsma.be/~media/Files/fsmfiles/mou/mou_2001-03-22_euronextgroup.ashx) and the Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to Market Oversight between the U.S. SEC and the College of Euronext Regulators (http://www.sec.gov/news/press/2007/2007-8_mou.pdf).