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Dear Mr Poels

## REGULATION IMPACT STATEMENT – FINAL ASSESSMENT SECOND PASS – ASIA REGION FUNDS PASSPORT

I am writing in relation to the attached Regulation Impact Statement (RIS) prepared for the *Corporations Amendment (Asia Region Funds Passport) Bill 2018*.

I believe the RIS meets best practice requirements and is consistent with the ten principles for Australian Government policy makers. In particular, the RIS addresses the seven RIS questions:

### *What is the problem?*

The level of funds Australia manages on behalf of foreign residents is very low when compared to the key Asian financial centres. Only 4 per cent of total funds managed in Australia in 2016 were sourced from overseas. This compares to approximately 69 and 80 per cent in Hong Kong and Singapore respectively.

A key impediment to Australian funds managers offering their services in Asia is the regulatory barriers that exist in the region.

### *Why is government action needed?*

Given that it is regularly barriers which are impeding cross border trade in financial services, government action is necessary to harmonise laws and create a passporting regime that would allow certain regulatory barriers to be lowered for qualifying funds.

### *What policy options are being considered?*

In 2016, the Australian Government signed the Asia Region Funds Passport (Passport) Memorandum of Cooperation (MOC), along with Japan, Korea, New Zealand and Thailand. This regulation assessment considers two options of whether or not to implement the Passport Arrangements. Only two options are considered as the decision relates to an international agreement.

Therefore, the Government may either maintain the status quo and not implement the Passport provisions (Option 1), or legislate the arrangements of the MOC (Option 2).

*What are the benefits and costs of each option?*

Option 1: Maintain the status quo and not implement the Passport provisions.

If Australia does not implement the passport provisions, Australian fund operators will continue to face significant regulatory barriers when attempting to sell collective investment schemes across borders.

This option imposes no additional regulatory costs on any entity. However, if Australia decides against legislating the Passport arrangements, it is likely that the Passport will still commence. Under the MOC, the Passport will activate after any two participating economies complete the implementation. This would leave Australia's industry at a disadvantage as these economies' managed funds industries would have preferential access to each other's markets but the Australian industry would not.

Option 2: Legislate the provisions of the MOC.

Legislating the Passport provisions will give Australian fund managers simplified and more efficient access to international markets.

Importantly, the Passport will allow a fund to be offered across multiple economies under one set of rules, using one legal vehicle. The main regulatory savings captured are savings from reduced compliance costs by not having to meet multiple sets of regulatory arrangements. Instead, fund managers will only need to comply with a single set of streamlined arrangements.

Overall, the Passport is expected to reduce regulatory barriers associated with cross-border trade of collective investment schemes, and is anticipated to bring approximate ongoing savings of \$0.8 million annually. This figure captures both the regulatory benefits and costs associated with Passport compliance under the Regulatory Burden Measurement framework.

*Who have you consulted and how were they consulted?*

From the outset, the Passport was developed multilaterally. Australian officials collaborated closely with representatives of securities regulators and finance ministries from across the region.

Between April and July 2014, the Passport working group consulted with industry in the region on the design of a future passport – this included consultation directly with Australian industry. This consultation informed the development of the MOC. Between August and October 2014 Australian industry was consulted about the regulatory costs and savings of participating in the Passport.

The Government publicly consulted on an exposure draft of the core chapter for the Passport regulatory framework between August and September 2017. This initial consultation was followed by public consultation on revisions to the core chapter and other required legislative changes between December 2017 and January 2018.

*What is the best option from those considered?*

Option 2 is preferred because it will have benefits for investors, and strengthen regional cooperation and trust amongst regulatory authorities involved. It has strong support within industry, and more broadly in the region.

For businesses that choose to offer Passport compliant funds, Option 2 will introduce both regulatory costs and benefits. However, it is calculated that the benefits will outweigh the costs.

*How will the chosen option be implemented and evaluated?*

Following the signing of the MOC it is necessary to reflect the Passport arrangements in Australian law through a package of amendments to the *Corporations Act 2001*, the *Australian Securities and Investments Commission Act 2001* and other related legislation.

A Joint Committee was established under the MOC, which consists of one representative from each of the participating economies. Part of the Joint Committee's responsibilities is to monitor the Passport arrangements and its operation, which includes ensuring that the application of the Passport arrangements remains consistent with the objectives of the Passport. The Joint Committee is also tasked with undertaking a review of the Passport arrangements two years after the date on which the Passport first becomes operational, or at a time determined by the Joint Committee.

I am satisfied that the RIS addresses the concern raised in your letter of 22 February 2018. Specifically, the RIS now includes an attachment summarising stakeholder feedback that informed the development of the Passport.

Accordingly, I am satisfied that the RIS now meets best practice consistent with the Australian Government Guide to Regulation.

I submit the RIS to the Office of Best Practice Regulation for formal assessment.

Yours sincerely

John Lonsdale  
Deputy Secretary  
Markets Group