

M E M O R A N D U M

To: ACCESS Pool Joint Committee Councils

Subject: Amended and Re-stated Inter-Authority Agreement ("IAA")

1 Introduction

1.1 The IAA is the central constitutional document that describes the relationship between the Councils in respect of their pooling of investments under the ACCESS Pool. As legal advisors to the ACCESS Pool, we were asked by the Joint Committee, acting via the Governance Sub-Group ("GSG"), to review the terms of the IAA, which was originally executed by the Councils on 12 July 2017. A review of the IAA was required within two years of its execution, but it became clear that the IAA required numerous other amendments to take account of the changes to the ACCESS Pool over the first three years of its operation. In essence, the amended and restated IAA takes the Joint Committee's central governance document from the establishment phase of the ACCESS Pool to the business as usual/operational phase.

1.2 In particular, ACCESS has evolved beyond the original focus on the procurement of an operator for the authorised contractual scheme ("ACS"), i.e. Link Fund Solutions Limited ("Link"). As you will be aware, the ACS is a vehicle for pooling actively managed liquid investments. In the original IAA, other aspects of the ACCESS Pool were not given the same degree of focus, so the passively managed equities which are under UBS' management and the future plans for alternative investments, were not addressed. Operational changes, such as the gradual transition of some responsibilities from the Officer Working Group ("OWG") to the establishment of the ACCESS Support Unit ("ASU") also needed to be reflected in the IAA. Finally, the description of the role of the Section 151 officers, although recognised in a very broad sense in the original agreement, did not reflect their obligations in terms of business planning or providing advice to the members of the Joint Committee.

1.3 This memorandum outlines the key amendments to the IAA which have been reviewed by all of the Councils' Monitoring Officers.

2 Recitals and definitions

2.1 Amendments have been made to the recitals and definitions for clarification purposes. Though not an exhaustive list, these amendments include:

- (a) updating defined terms, for example, " Client Unit" has been amended to "ASU" and the "Operator Contract" has been changed to "Operator Agreement", to reflect how aspects of the Pool operate or actual terminology;
- (b) clarifying the role of the Joint Committee, to make it clear that it has a wider role in respect of other investments under structures that are not and will not be part of the ACS;
- (c) clarification that the IAA and activities under it will not involve the Councils engaging in any regulated activity for financial services legislation purposes;

- (d) distinguishing between the role of the operator of the ACS and the potential for appointing further operator(s) of other collective investment vehicles in the future; and
- (e) the expansion of the Pool's activity to incorporate not only the existing Pool Aligned Assets (ie the passive investments held by UBS), but also the anticipated creation of new arrangements for illiquid investments which would fall outside of the ACS (leading to the defined terms of "Pool Aligned Assets Provider" and "Pool Aligned Assets Vehicle").

3 Amendments to specific clauses

3.1 The following key amendments have been agreed:

- (a) Clause 5.5(e) (*Establishment of Joint Committee*) – this clause has been amended to reflect the statutory obligations owed by the Section 151 Officers, who may provide advice to the Joint Committee under the aegis of the Section 151 Officers Group (as may Monitoring Officers where required);
- (b) Clause 7 (*Procurement*) – we have replaced language in the original IAA which was superseded by events (i.e. the original IAA was entered into before the procurement of the Operator and therefore before the Operator Agreement was entered into), and clarified the role of the Procurement Lead Authority but without changing the underlying requirement for each authority to appoint any service provider individually;
- (c) Clause 8 (*Governance*) – the changes here reflect the transfer of Host Authority from Kent to Essex and the supporting role of the ASU;
- (d) Clause 12 (*Withdrawal*) – in the event that a Council withdrew from the Joint Committee, the original IAA automatically required all of its assets to be withdrawn from the ACS, unless the Joint Committee agreed otherwise. We have expanded upon this flexibility in respect of Former Councils and the role of the Joint Committee; and
- (e) Clause 13 (*Termination*) - the original IAA could only be terminated by reference to the Operator Agreement with Link. This connection has been deleted so that any termination would be on terms agreed by all Councils.

4 Amendments to specific schedules

- 4.1 Leaving aside drafting changes to Schedule 2 (the Joint Committee's terms of reference), the main changes are to Schedules 4 and 5.
- 4.2 The original Schedule 4 contained the terms of reference for the OWG, which have been replaced by terms of reference for the Section 151 Officers Group (which were not reflected at all in the original IAA). The OWG's remit will now be described in the Governance Manual. The text of Schedule 4 reflects the instructions of the Section 151 Officers.

- 4.3 A number of amendments have been made to Schedule 5 (Cost Sharing), including but not limited to the following:
- (a) updates to cover the allocation of costs payable in relation to the newly defined Pool Aligned Asset Providers or incurred under any Pool Aligned Asset Vehicles (ie non-ACS investments) and clarification of the original intention of the Councils in areas such as asset transitions both to and from the Pool;
 - (b) if another Council applies to join the ACCESS Pool, the original IAA only allowed the Joint Committee a discretion waive part or all of the Pool Establishment Costs, but the amended IAA will now allow the Joint Committee to charge an additional fee for joining if appropriate; and
 - (c) finally, the introduction of greater flexibility in terms of budgetary procedures.

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2 September 2020