


**From:** [Paul Dyer](#)  
**To:** [Darby, Julian](#)  
**Subject:** RE: Review of Term Sheet UPDATED  
**Date:** Tuesday, 22 October 2019 10:28:48 AM  
**Attachments:** [image001.png](#)

---

Julian

s 9(2)(ba)(i)



P.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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**From:** Darby, Julian <JDarby@s 9(2)(a)>  
**Sent:** Friday, 18 October 2019 2:34 PM  
**To:** Paul Dyer <Paul.Dyer@s 9(2)(a)>  
**Cc:** Arnold, Matthew <marnold@s 9(2)(a)>  
**Subject:** RE: Review of Term Sheet UPDATED

Hi Paul

Please find attached our updated letter for inclusion in board papers. I have also included a PDF version of the marked up version so you have easily see the changes I have made. There were no changes required to the section in which the performance fee cap is valued.

I have included a small comment on E&O in the letter. If you would like this to be addressed outside of the letter please advise.

Again, as we discussed, this letter is provided in confidence and I ask that if this is to be shared with anyone outside of either ACC's board, senior management team or the investment team, then our written permission be first sought.

Julian

**Julian Darby**

/ SENIOR CONSULTANT

s 9(2)(a)

---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Friday, 11 October 2019 10:16 AM

**To:** Arnold, Matthew <[marnolds 9\(2\)\(a\)](mailto:marnolds 9(2)(a))>; Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** RE: Review of Term Sheet

Matthew / Julian

s 9(2)(ba)(i)

Many thanks .....Paul.

**Paul Dyer, Advisor, ACC**

s 9(2)(a)

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---

**From:** Arnold, Matthew [[mailto:marnolds 9\(2\)\(a\)](mailto:marnolds 9(2)(a))]

**Sent:** Tuesday, 10 September 2019 1:14 p.m.

**To:** Darby, Julian; Paul Dyer

**Subject:** RE: Review of Term Sheet

Thanks, Julian.

Hi Paul – hope all is well and I look forward to meeting you in due course.

As Julian mentioned, please feel free to get in touch if you need anything while he's away.

Best regards, Matt

**Matthew Arnold, CFA, CAIA**

/ DIRECTOR, NZ INSTITUTIONAL

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s 9(2)(a)

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**From:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Sent:** Tuesday, 10 September 2019 11:44 AM

**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Cc:** Arnold, Matthew <[marnold@s 9\(2\)\(a\)](mailto:marnold@s 9(2)(a))>

**Subject:** RE: Review of Term Sheet

Hi Paul.

Not a problem. I have copied in Matt Arnold who you can address any requests you might have while I am away.

Julian

**Julian Darby**

/ SENIOR CONSULTANT

s 9(2)(a)

---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Tuesday, 10 September 2019 10:52 AM

**To:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** RE: Review of Term Sheet

Julian

One point I just thought of: If we do tweak up the fees could Russell re-issue this with the updated figures? Slightly awkward since it would probably be while you're away. Likely to be just the base fees, so no need to rerun the Monte Carlo. P.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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---

**From:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Sent:** Friday, 6 September 2019 2:12 PM

**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Cc:** Cook, Tim <[TCook@s 9\(2\)\(a\)](mailto:TCook@s 9(2)(a))>

**Subject:** RE: Review of Term Sheet

Good afternoon Paul.

Please find attached a letter in which we provide comment on the Term Sheet as proposed by Nicholas.

If there are any follow-up question, please let me know.

We recognise that this is a unique transition event for ACC, and therefore John Venardos (who heads our transition team in Asia/Pac) has indicated his willingness to join any call with ACC to provide his guidance if this would help ensure a seamless transition. He has been involved in similar transitions to this in the past.

This letter is provided in confidence and I ask that if this is to be shared with anyone outside of either ACC's board, senior management team or the investment team, then our written permission be first sought.

Regards  
Julian

**Julian Darby**

/ SENIOR CONSULTANT

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s 9(2)(a)

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**From:** Paul Dyer <[Paul.Dyer@s9\(2\)\(a\)](mailto:Paul.Dyer@s9(2)(a))>  
**Sent:** Friday, 30 August 2019 9:36 AM  
**To:** Darby, Julian <[JDarby@s9\(2\)\(a\)](mailto:JDarby@s9(2)(a))>  
**Subject:** RE: Follow Up

Julian

No, all good. I sent an email on 26/8 confirming the go ahead. So now I think it's a case of awaiting the results.

s 9(2)(ba)(i)

P.

**Paul Dyer, Advisor, ACC**

s 9(2)(a)

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---

**From:** Darby, Julian [[mailto:JDarby@s9\(2\)\(a\)](mailto:JDarby@s9(2)(a))]  
**Sent:** Thursday, 29 August 2019 1:35 p.m.  
**To:** Paul Dyer  
**Subject:** FW: Follow Up

Hi Paul.

I was wondering whether you had any feedback from either you or Paul Miller on my email below. Give me a call if you have any comments/questions.

Regards  
Julian

**Julian Darby**

/ SENIOR CONSULTANT

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s 9(2)(a)

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**From:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>  
**Sent:** Monday, 26 August 2019 4:29 PM  
**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>  
**Subject:** RE: Follow Up

Good afternoon Paul

Thank you for the providing the scope of the work you require.

We would be happy to assist by producing a brief paper addressing the issues you have raised.

The scope indicates that we will need to draw on expertise from different parts of Russell Investments. The following business units have indicated their ability and willingness to contribute to this paper.

- Operational due diligence team
- Implementation team
- Global equity team
- Chief Investment Officer (Australasia)

#### Required

We recognise that time is crucial and that you have specific questions you would like us to address. As such, we expect to be able to provide a 4-5 page paper addressing the issues raised in points 3, 4 and 5 of your email. We aim to provide you our report by Friday next week or earlier if possible.

Proposed cost: [s 9\(2\)\(ba\)\(i\)](mailto:s 9(2)(ba)(i))

Please let me know if this is acceptable to you and the board.

Regards  
Julian

**Julian Darby**  
/ SENIOR CONSULTANT

**Russell Investments**  
PWC Tower | Level 15 | 188 Quay Street | Auckland | 1010 | New Zealand  
[s 9\(2\)\(a\)](mailto:s 9(2)(a))

s 9(2)(a)

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---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Wednesday, 21 August 2019 9:39 AM

**To:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** RE: Follow Up

Julian

Monday it will have to be. Re-reading my email, should emphasise that the important point is the reasonableness of the proposed fees. The other items in my email are fairly self-evident; there is no need to opine in much detail about these. ACC is well used to contracting with a wide range of managers; the only difference here is the internal conflicts. So basically looking for assurance that the proposed terms and conditions are in line with what one would expect from an arms-length arrangement.

P.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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---

**From:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Sent:** Wednesday, 21 August 2019 8:47 AM

**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Subject:** RE: Follow Up

Paul.

Thank you for dropping by last week and for your follow-up email.

First, I wish to point out that we are willing to help out with this piece of work. Before reverting to you with more details I need to speak to my colleagues offshore to ensure that we can deliver exactly what you require.

I have begun speaking to them but as mentioned in our meeting it is a particularly difficult week to progress this as I am preparing papers for client meetings and also attending a number of board meetings.

However, I realise that timing is crucial for this piece of work and that Paul Miller will be expecting a response from you (and us) soon.

I will give you a progress report by Monday, if that is ok?

Regards  
Julian

**Julian Darby**

/ SENIOR CONSULTANT

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---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Friday, 16 August 2019 1:28 PM

**To:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** Follow Up

Julian

Good to talk today. Couldn't say much prior, but now I thought it might help to repeat the scope what ACC is after.

As I see it:

1. The high level objective is to establish the mandate on commercial, arms length terms.
2. No need to opine on the capabilities and likely quality of the manager – can assume ACC has done appropriate DD and satisfied itself. Likewise no input needed on how this mandate sits within the broader portfolio, helps meet scheme objectives etc.



3. A key part is the fee structure: is this fair and reasonable; is it in line with what one would expect in the current market for a mandate of this size and type. This includes the structure of the performance fee – could it be improved.

4. s 9(2)(ba)(i)



5. Transition issues. What degree of preparedness should the manager be required to achieve before the new mandate can “go live”? Is it likely to be feasible/necessary to operate it in parallel internally and externally for a period? What backup plans should ACC have in place before commencement?

The key words here are probity and prudence. The ACC board are conscious of their obligations towards public funds. It is critical to them that all actions be open and transparent to informed scrutiny. You can be confident that as a large investor ACC has the technical capability to implement the change. This role is about assurance on process.

Once again, thanks for your time today and looking forward to further discussion.

Paul.

Paul Dyer, Advisor, ACC

s 9(2)(a)

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**From:** [Peter Scobie](#)  
**To:** [William More](#)  
**Subject:** FW: IMA  
**Date:** Tuesday, 8 October 2019 8:52:10 AM

---

Hi William,

As discussed. I see the current process as a probity issue and I believe I am conflicted.

Regards

Peter

**Peter Scobie, Mgr Ext Managed Funds 00103202, ACC**  
s 9(2)(a)

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**From:** Peter Scobie  
**Sent:** Friday, 13 September 2019 10:11 AM  
**To:** Paul Dyer <Paul.Dyer@s 9(2)(a)>  
**Subject:** IMA

Hi Paul,

As the IMA progresses I thought it useful to send you some thoughts. Some we have already discussed.

I think it is important that we carefully consider the process of procurement of external manager services and what would appear unusual from an industry perspective and from an ACC perspective. Funding a new manager is not unusual. It is a normal course of business and ACC has been involved in start-ups in the past. Having said that there are some aspects of the current intention to fund Nicholas's start up that are a departure from what ACC have done in the past.

In no particular order

ACC seeks to get the most appropriate investment management strategy and while I have been in my current role it has always been contestable by considering more than one strategy.

s 9(2)(ba)(i)

I believe we need an external party to review the new business because of the ACC conflicts

(Mercer may be the right organisation). The review should be in two phases.

Phase 1 – the new business is tested for acceptable industry standards and how many are met or not met. If the new business falls short on some aspects we should have a clear timetable on when to expect these to be remedied (Phase 2 – the shorter the time frame the better).

Phase 2 – Another review to test whether the business has met ACC's required standards.

s 9(2)(ba)(i)

There is a probity issue and given Nicholas is my boss I can not be involved in the recommendation/decision. s 9(2)(g)(i)

Thanks

Peter

 Peter Scobie, Mgr Ext Managed Funds 00103202, ACC

s 9(2)(a)

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**From:** [Paul Dyer](#)  
**To:** [James Miller](#); [Gareth Worthington](#); [James Miller](#)  
**Cc:** [Sharon Champness](#); [Mei Fern Johnson](#); [Tiffany Dvorak](#)  
**Subject:** RE: IMA and TSA  
**Date:** Monday, 7 October 2019 3:50:07 PM

---

All

FYI - Nicholas is back in the country and we went through both drafts today. Nothing came up that seemed overly problematic.

We agreed the ball is with him. Suggested he make proposed edits, I'll add a few as well, and get this to RMcV shortly. He will then have his lawyer check the version that comes back.

Our view was that we are not that far from being able to execute the TMA. Oct ACC Board meeting signoff looks on schedule.

P.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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---

**From:** James Miller <james s 9(2)(a)>

**Sent:** Monday, 7 October 2019 3:33 PM

**To:** Gareth Worthington <gareth.worthington s 9(2)(a)> James Miller  
<james s 9(2)(a)>

**Cc:** Sharon Champness <Sharon.Champness@ s 9(2)(a)> Mei Fern Johnson  
<meifern.johnson s 9(2)(a)> Tiffany Dvorak  
<tiffany.dvorak s 9(2)(a)> Paul Dyer <Paul.Dyer s 9(2)(a)>

**Subject:** Re: IMA and TSA

Gareth

Some comments from me:

s 9(2)(ba)(i)

[Redacted content]

s 9(2)(ba)(i)

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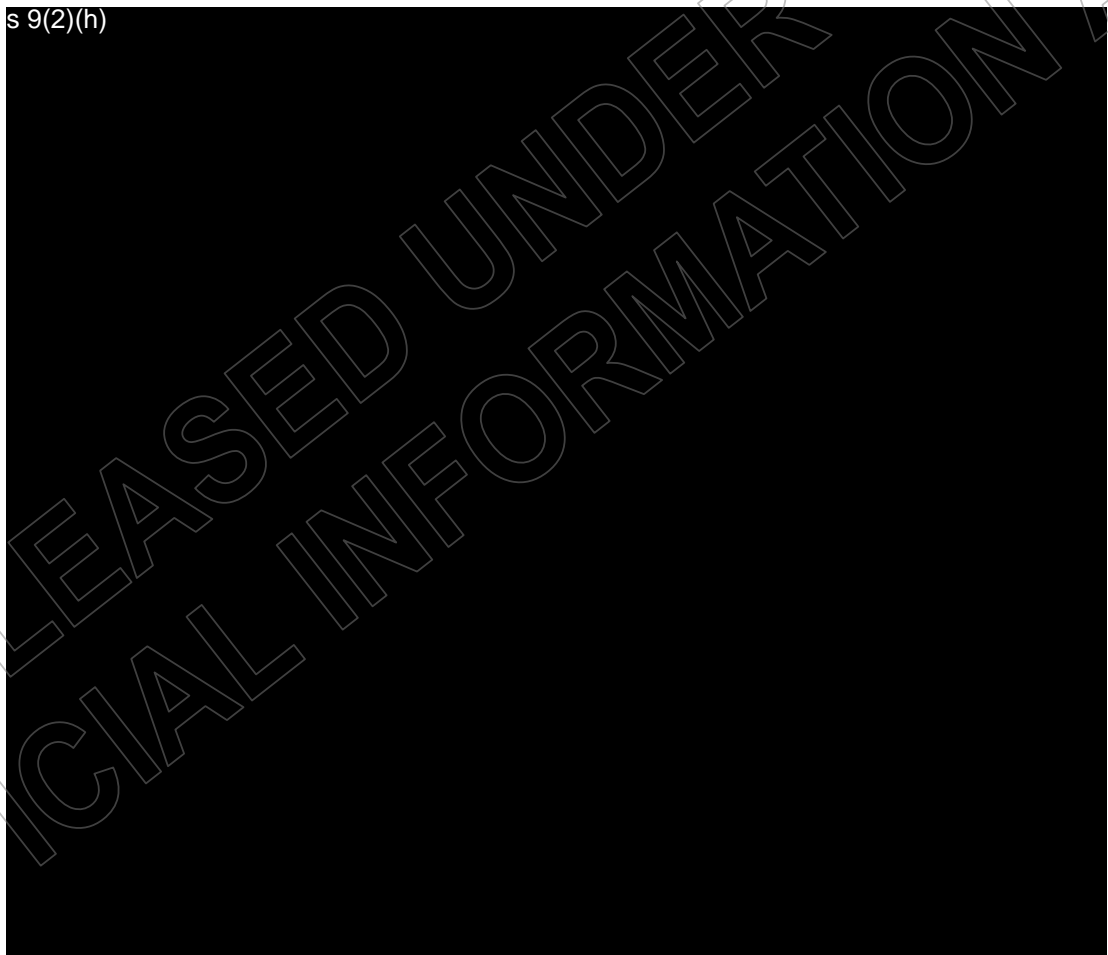
Thanks for all

James

Sent from a mobile device, please excuse brevity, and grammar.

On 4/10/2019, at 11:37 AM, Gareth Worthington <[gareth.worthington@s9\(2\)\(a\)](mailto:gareth.worthington@s9(2)(a))>  
wrote:

s 9(2)(h)



**Gareth Worthington**  
Special Counsel

Russell McVeagh, 157 Lambton Quay, PO Box 10-214, Wellington 6143, New Zealand

s 9(2)(a)

[gareth.worthington@s9\(2\)\(a\)](mailto:gareth.worthington@s9(2)(a))

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<3886887 ACC - TSA - v1.docx>

<3892204 New ACC IMA (draft 30 Sept 2019) - v8.docx>

<3908364 IMA differences comparison table (4 October 2019) - v2.docx>

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**From:** [Paul Dyer](#)  
**To:** [James Miller](#)  
**Subject:** Note on Project for BIC  
**Date:** Thursday, 19 September 2019 11:51:26 AM  
**Attachments:** [Memo on External Contract.doc](#)

---

James

Attached is a 2 page summary of progress to date. Designed to give you something to take to BIC. Might need updating by next week.

P.

**Paul Dyer, Advisor Investments, ACC**

**s 9(2)(a)**

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# Memorandum

|         |  |
|---------|--|
| TO      | Chair of Board Investment Committee        |
| FROM    | Paul Dyer                                  |
| DATE    | 19 September 2019                          |
| SUBJECT | Update on External Global Equities Mandate |

James

I thought you could use an update on how this is progressing. The process has been a little drawn out, not from any lack of goodwill, but rather because of a) the decision to seek external verification from Russell Investments (took 3 weeks) and b) Nicholas and Peter Scobie (our external contracts manager) being overseas until 7 October.

Despite these delays I'm confident we will land the project satisfactorily. Below is a summary of progress to date.

1. The idea has been discussed with Nicholas, who is keen to proceed. He produced an initial term sheet back in August. This was sound in spirit, but had a range of detail that needed nailing down (this is usual with investment mandates). § 9(2)(ba)(i)  
[REDACTED] There is no doubt that both parties were serious and were negotiating in good faith.
2. Because of the unusual circumstances, we decided to have the proposed terms externally reviewed. This was undertaken by Russell Investments. Our instructions to them were to look at all aspects of probity. In particular we wanted assurance that the terms were normal and arms length, as well as general advice on dealing with a startup manager. Their report (received 6 September) confirmed that the fee arrangement was attractive and competitive. It stressed that the future relationship with ACC needed to be fully arm's length, and that operational due diligence was critical for a new startup manager.
3. We have engaged Russell McVeigh to turn the term sheet into an executable contract. This has basically consisted of starting with ACC's standard manager contract, inserting the parameters from the current internal mandate (largely a cut and paste from the Investment Guidelines), and adding the various features that are particular to this mandate. The most important of these are:

a) § 9(2)(ba)(i)  
[REDACTED]

b) s 9(2)(ba)(i)

c)

d)

e)

f)

g)

4. This early draft is with Nicholas, and the ball is in his court. I had a text from him yesterday saying he was broadly happy, but wanted clarification s 9(2)(ba)(i) This seems not unreasonable. Hopefully a marked up copy of the draft will come from him over the weekend.
5. The critical outstanding issues seem to be fees, minimum portfolio size and minimum resourcing of the new venture. The mandate guidelines should largely carry over. Most of the rest is wording.
6. There are two other probity issues that also loom.
- a) **Operational due diligence.** This covers systems, backup, personnel, interaction with the Custodian etc. Normally this is conducted by ACC's operations team. Because of the potential conflicts, it seems best undertaken by an external party. Mercer offer this service at minimal cost (we have used them before). This step is particularly critical for start ups. Either this stage needs to be completed before the contract is executed, or else signoff by the external reviewer will need to be a condition of the contract. Either way this step needs to be completed before funding starts. The likely delay will be in the new operation meeting the required provisions (nothing exists at present).
  - b) **ACC Approval.** The recommendation to BIC/ACC Board cannot come from staff currently reporting to the CIO. The logical staff member to signoff the recommendation is the CEO. He has indicated that he is willing to do so.
7. In conclusion, due to circumstances this has taken longer than we would have liked. It is fairly likely that we will be close to an executable contract by next week. What will then remain will be transition issues, i.e. how we keep the portfolio continually operating until it switches to being a pure external mandate.

**From:** [Paul Dyer](#)  
**To:** [Scott Pickering](#); [James Miller](#)  
**Subject:** Fwd: Review of Term Sheet  
**Date:** Friday, 6 September 2019 6:45:33 PM  
**Attachments:** [image8b7a1e.PNG](#)  
[ATT00001.htm](#)  
[image001.png](#)  
[ATT00002.htm](#)  
[image001.png](#)  
[ATT00003.htm](#)  
[image001.png](#)  
[ATT00004.htm](#)  
[2019-001 Review of Term Sheet.pdf](#)  
[ATT00005.htm](#)

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Scott, James

This came this afternoon from Russell. Paraphrased it says:

- the proposed fees are reasonable, in fact low for this mandate
- the arrangement needs to be truly arms length to ensure accountability
- ACC should undertake a good deal of operational DD before commencement
- important to ensure the manager has a sustainable business

This response is pretty much what I would have expected, and presents no real obstacles. It might take a little time to fulfil the operational requirements, but nothing difficult.

Out of scope



P.

Sent from my iPad

Begin forwarded message:

**From:** "Darby, Julian" <[JDarby](#)s 9(2)(a)>  
**Date:** 6 September 2019 at 2:12:03 PM NZST  
**To:** Paul Dyer <[Paul.Dyer](#)s 9(2)(a)>  
**Cc:** "Cook, Tim" <[TCook](#)s 9(2)(a)>  
**Subject:** RE: Review of T

Good afternoon Paul.

Please find attached a letter in which we provide comment on the Term Sheet as proposed by Nicholas.

If there are any follow-up question, please let me know.

We recognise that this is a unique transition event for ACC, and therefore John Venardos (who heads our transition team in Asia/Pac) has indicated his willingness to join any call with ACC to provide his guidance if this would help ensure a seamless transition. He has been involved in similar transitions to this in the past.

This letter is provided in confidence and I ask that if this is to be shared with anyone outside of either ACC's board, senior management team or the investment team, then our written permission be first sought.

Regards  
Julian

**Julian Darby**

 SENIOR CONSULTANT

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**From:** [Paul Dyer](#)  
**To:** [Darby, Julian](#)  
**Subject:** Re: Follow Up  
**Date:** Monday, 26 August 2019 6:48:41 PM  
**Attachments:** [image001.png](#)  
[image13111c.PNG](#)

---

Julian

Right on target. Please proceed.

Thanks, Paul.

Sent from my iPad

On 26/08/2019, at 4:29 PM, Darby, Julian <[JDarby](#)> s 9(2)(a) wrote:

Good afternoon Paul

Thank you for the providing the scope of the work you require.

We would be happy to assist by producing a brief paper addressing the issues you have raised.

The scope indicates that we will need to draw on expertise from different parts of Russell Investments. The following business units have indicated their ability and willingness to contribute to this paper.

- Operational due diligence team
- Implementation team
- Global equity team
- Chief Investment Officer (Australasia)

#### **Required**


We recognise that time is crucial and that you have specific questions you would like us to address. As such, we expect to be able to provide a 4-5 page paper addressing the issues raised in points 3, 4 and 5 of your email. We aim to provide you our report by Friday next week or earlier if possible.

Proposed cost: s 9(2)(ba)(i)

Please let me know if this is acceptable to you and the board.

Regards  
Julian

**Julian Darby**

 SENIOR CONSULTANT

**Russell Investments**

PWC Tower | Level 15 | 188 Quay Street | Auckland | 1010 | New Zealand

s 9(2)(a)

[russellinvestments.com](http://russellinvestments.com)

<image13111c.PNG>

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---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Wednesday, 21 August 2019 9:39 AM

**To:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** RE: Follow Up

Julian

Monday it will have to be. Re-reading my email, should emphasise that the important point is the reasonableness of the proposed fees. The other items in my email are fairly self-evident; there is no need to opine in much detail about these. ACC is well used to contracting with a wide range of managers; the only difference here is the internal conflicts. So basically looking for assurance that the proposed terms and conditions are in line with what one would expect from an arms-length arrangement.

P.

 **Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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---

**From:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Sent:** Wednesday, 21 August 2019 8:47 AM

**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Subject:** RE: Follow Up

Paul.

Thank you for dropping by last week and for your follow-up email.

First, I wish to point out that we are willing to help out with this piece of work. Before reverting to you with more details I need to speak to my colleagues offshore to ensure that we can deliver exactly what you require.

I have begun speaking to them but as mentioned in our meeting it is a particularly difficult week to progress this as I am preparing papers for client meetings and also attending a number of board meetings.

However, I realise that timing is crucial for this piece of work and that Paul Miller will be expecting a response from you (and us) soon.

I will give you a progress report by Monday, if that is ok?

Regards  
Julian

**Julian Darby**

**/ SENIOR CONSULTANT**

**Russell Investments**

PWC Tower | Level 15 | 188 Quay Street | Auckland | 1010 | New Zealand

s 9(2)(a)

[russellinvestments.com](http://russellinvestments.com)

[<image001.png>](#)

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---

**From:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](mailto:Paul.Dyer@s 9(2)(a))>

**Sent:** Friday, 16 August 2019 1:28 PM

**To:** Darby, Julian <[JDarby@s 9\(2\)\(a\)](mailto:JDarby@s 9(2)(a))>

**Subject:** Follow Up

Julian

Good to talk today. Couldn't say much prior, but now I thought it might help to repeat the scope what ACC is after.

As I see it:

1. The high level objective is to establish the mandate on commercial, arms length terms.
2. No need to opine on the capabilities and likely quality of the manager – can assume ACC has done appropriate DD and satisfied itself.



Likewise no input needed on how this mandate sits within the broader portfolio, helps meet scheme objectives etc.

3. A key part is the fee structure: is this fair and reasonable; is it in line with what one would expect in the current market for a mandate of this size and type. This includes the structure of the performance fee – could it be improved.

s 9(2)(ba)(i)



The key words here are probity and prudence. The ACC board are conscious of their obligations towards public funds. It is critical to them that all actions be open and transparent to informed scrutiny. You can be confident that as a large investor ACC has the technical capability to implement the change. This role is about assurance on process.

Once again, thanks for your time today and looking forward to further discussion.

Paul.

**Paul Dyer, Advisor, ACC**

s 9(2)(a)

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**From:** [James Miller](#)  
**To:** [Nicholas Bagnall](#)  
**Subject:** V1 of the IMA  
**Date:** Monday, 26 August 2019 5:46:28 PM

---

Hi Nicholas

I have been very busy with reporting season. So I'm a bit behind.

I have reviewed the draft V1 of the IMA from R Mck. They are:

1. Making changes I have suggested (most are small)
2. Writing a purpose statement
3. s 9(2)(ba)(i)

[REDACTED]

4. s 9(2)(ba)(i)

Paul is getting the probity review done.

We need to model the performance fee.

Once i have this done, i will send to you to ensure you are happy with the changes. In general the changes are all positive to you, but are slightly more practical.

I hope this to your approval.

I expect a turn around by Wednesday.

James

Out of scope

[REDACTED]

Sent from my iPad

<https://www.celebratingourexchange.co.nz>

**From:** [James Miller](#)  
**To:** [Paul Dyer](#)  
**Subject:** Fwd: Terms sheet  
**Date:** Friday, 16 August 2019 2:18:40 PM  
**Attachments:** [3865112\\_Term\\_Sheet - v6.docx](#)  
[ATT00001.htm](#)

---

Paul

Just an FYI ... step one of getting the legal agreement.

When Russell comes back we can hammer out the final terms.

james


Sent from my iPad

Begin forwarded message:

**From:** Joanna Khoo <[joanna.khoo@s 9\(2\)\(a\) \[REDACTED\]](mailto:joanna.khoo@s 9(2)(a) [REDACTED])>  
**Date:** 14 August 2019 at 7:48:09 AM NZST  
**To:** "James Miller (NZX Limited)" <[james@s 9\(2\)\(a\) \[REDACTED\]](mailto:james@s 9(2)(a) [REDACTED])>  
**Cc:** Mei Fern Johnson <[meifern.johnson@s 9\(2\)\(a\) \[REDACTED\]](mailto:meifern.johnson@s 9(2)(a) [REDACTED])>, Tiffany Dvorak <[tiffany.dvorak@s 9\(2\)\(a\) \[REDACTED\]](mailto:tiffany.dvorak@s 9(2)(a) [REDACTED])>  
**Subject:** Terms sheet

Hi James

s 9(2)(ba)(i)



Kind regards  
Joanna

[Joanna Khoo](#)  
Special Counsel

Russell McVeagh, Vero Centre, 48 Shortland Street, PO Box 8, Auckland 1140, New Zealand

s 9(2)(a)

[joanna.khoo@s 9\(2\)\(a\) \[REDACTED\]](mailto:joanna.khoo@s 9(2)(a) [REDACTED])

[www.russellmcveagh.com](http://www.russellmcveagh.com)

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more secure communication between us, please contact our systems administrator by email at [mail.admin@russellmcveagh.com](mailto:mail.admin@russellmcveagh.com)

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**From:** [James Miller](#)  
**To:** [Scott Pickering](#)  
**Cc:** [Paula Rebstock](#)  
**Subject:** Fwd: Terms sheet  
**Date:** Friday, 16 August 2019 2:16:00 PM  
**Attachments:** [3865112\\_Term\\_Sheet - v6.docx](#)  
[ATT00001.htm](#)

---

Scott and Paula

FYI

Just letting you know we are just aligning all the commercial issues. And drafting a commercial legal agreement.

Paula is also getting Russell to do an independent probity check. Given the internal candidate.

James


Sent from my iPad

Begin forwarded message:

**From:** Joanna Khoo <[joanna.khoo@s9\(2\)\(a\)](mailto:joanna.khoo@s9(2)(a))>  
**Date:** 14 August 2019 at 7:48:09 AM NZST  
**To:** "James Miller (NZX Limited)" <[james@s9\(2\)\(a\)](mailto:james@s9(2)(a))>  
**Cc:** Mei Fern Johnson <[meifern.johnson@s9\(2\)\(a\)](mailto:meifern.johnson@s9(2)(a))> Tiffany Dvorak <[tiffany.dvorak@s9\(2\)\(a\)](mailto:tiffany.dvorak@s9(2)(a))>  
**Subject:** Terms sheet

Hi James

s 9(2)(ba)(i)



Kind regards  
Joanna

**Joanna Khoo**  
Special Counsel

Russell McVeagh, Vero Centre, 48 Shortland Street, PO Box 8, Auckland 1140, New Zealand

s 9(2)(a)

[joanna.khoo@s9\(2\)\(a\)](mailto:joanna.khoo@s9(2)(a))

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**From:** [Scott Pickering](#)  
**To:** [Paul Dyer](#)  
**Subject:** RE: Nicholas - Sensitive  
**Date:** Wednesday, 14 August 2019 1:38:42 PM

---

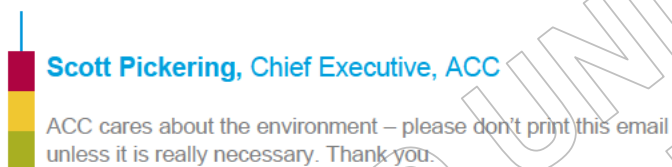
Hi Paul,

Thanks for your email and for your support in this process.

I also think the independent review of this matter is prudent to protect all parties. I've also noted the correspondence between you and James and would agree that what Nicholas is proposing seems very reasonable.

I wish to confirm my approval for you to engage Russell Investments in this matter.

Scott



---

**From:** Paul Dyer  
**Sent:** Wednesday, 14 August 2019 12:14 PM  
**To:** Scott Pickering <Scott.Pickering@s9(2)(a)>  
**Subject:** Nicholas - Sensitive

Scott

This is where things are at: I had a long talk with James M. in Auckland 2 weeks ago. As part of the restructure he was keen on transitioning the existing internal global equity portfolio to an external mandate. I discussed this with Nicholas and prompted him into producing a draft term sheet, which James subsequently shared with me. It seemed fine to me, just the usual details to complete, and if anything erred towards being generous to ACC. Easy to convert to a contract.

But before doing this James has, quite rightly, suggested that for probity reasons we need external scrutiny, (proposed terms are reasonable, and reflect arms length market norms etc) and asked me to arrange it. This in itself isn't difficult. I propose to use the Auckland office of Russell Investments, who are the leading investment consultancy in NZ. They've done various jobs for us over recent years and are a quality outfit.

However, before proceeding (1) It doesn't seem right to take instructions of this type direct from Board members and (2) in any case I have no delegated authority to commit ACC to expenditure. I discussed briefly with John Healy; he suggested the authorisation would be best from you. If you give the go ahead I'll meet with Russell this Friday in Auckland.



Paul.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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**From:** [Nicholas Bagnall](#)  
**To:** [James Miller](#)  
**Cc:** [Nicholas Bagnall](#)  
**Subject:** RE: Feedback on Governance review / term sheet for externalmanagement  
**Date:** Thursday, 8 August 2019 5:17:02 PM

---

Thanks.  
Yes, all sounds good.  
regards

Nicholas Bagnall  
Investment Manager, ACC.  
Ph (+64 4) s 9(2)(a)

---

**From:** James Miller [mailto:james s 9(2)(a)]  
**Sent:** Thursday, 8 August 2019 4:21 p.m.  
**To:** Nicholas Bagnall  
**Cc:** Nicholas Bagnall  
**Subject:** RE: Feedback on Governance review / term sheet for externalmanagement

Hi Nicolas

Just a quick update.

1. Nothing material has come back from Paul. He is doing a good job.
2. We are getting some legal help to move to the next stage. This will give you something concrete to consider.
3. I thought you were slightly underselling yourself in the suggested terms. We have come up with things that the corporation would like to propose, s 9(2)(ba)(i) [REDACTED]. I appreciate there may be a cost for this [REDACTED].
4. s 9(2)(ba)(i) [REDACTED]
5. Finally I will get a probity check for the BIC (primarily benchmark assessment), given the internal nature of the appointment.

Hope this all meets with your approval.

That is all for now, I will revert with more information as soon as I have it.

James

---

**From:** Nicholas Bagnall [mailto:Nicholas.Bagnall s 9(2)(a)]  
**Sent:** Monday, 5 August 2019 11:51 a.m.  
**To:** James Miller <james s 9(2)(a)>  
**Cc:** Nicholas Bagnall <nicholasbagnall s 9(2)(a)>  
**Subject:** Re: Feedback on Governance review / term sheet for externalmanagement

Yes, no problem with that!  
Regards  
Nicholas

Sent from my iPhone

On 5/08/2019, at 10:53 AM, James Miller <james@[REDACTED] s 9(2)(a)> wrote:

Hi Nicholas

I haven't had a chance to read in detail. At first glance there is nothing of concern.

If ok with you I need to get Paul to do a bit of probity work for me. And run a spread sheet over your numbers. Nothing of concern just saves me doing it.

James

Sent from my iPad

<https://www.celebratingourexcchange.co.nz>

On 5/08/2019, at 9:50 AM, Nicholas Bagnall <nicholasbagna[REDACTED] s 9(2)(a)> wrote:

Hi James

Sorry I've taken so long to come back to you.

I attach two documents – [REDACTED] Out of scope [REDACTED], and the other contains a draft term sheet that I'd propose for managing global equities for ACC.

I think you'll find that the terms I'm proposing for managing global equities for ACC are significantly better than the deal ACC gets from any other external manager. [REDACTED] s 9(2)(ba)(i)

[REDACTED]

Out of scope

[REDACTED]

Out of scope

Regards

Nicholas

Sent from [Mail](#) for Windows 10

---

**From:** [James Miller](#)

**Sent:** Friday, 2 August 2019 9:17 AM

**To:** [Nicholas Bagnall](#)

**Cc:** [Nicholas Bagnall](#)

**Subject:** Re: Feedback on Governance review / term sheet for externalmanagement

Hi Nicholas

Either way it lands, you will reflect on it as a major pivot point in your career. So its important you take the time to get it right.

I was trying to get Paul's workstream to a more concrete stage, so you had something to base your decision upon. But I understand Paul has briefed you, to the effect we are genuinely trying to land on a workable outcome.

Regards

James

Sent from my iPad

<https://www.celebratingourexchange.co.nz>

On 2/08/2019, at 9:05 AM, Nicholas Bagnall

<[nicholasbagnall](#)s 9(2)(a) wrote:

Hi James

Sorry I've taken so long to get back to you on this – this was partly because I was feeling guilty about abandoning everyone else in the team, and was holding off while I waited for Phil's decision.

I said to Paul Dyer that I'd aim to get back to you before the end of this week, but I would like to spend a bit more time on it, so rather than send you my current draft now, I intend to review it again tonight, and send it through to you either tonight or tomorrow morning.

Thanks for your patience!

Regards

Nicholas

Sent from [Mail](#) for Windows 10

<term sheet.docx>

<feedback on PWC draft report.docx>

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**From:** [James Miller](#)  
**To:** [Paul Dyer](#)  
**Subject:** Re: term sheet.docx  
**Date:** Thursday, 8 August 2019 12:26:52 PM

---

Budget - whatever you need as long it is reasonable. It is not that difficult a job. And it has very low risk.

ToR

1. Assess the terms of the manager contract

A. Benchmark fees against comparators

B. Benchmark terms v comparators.

2. Provide a view that the fees and terms are reasonable for the BIC to accept.

The report should be addressed to me as Chair of BIC

Confidentially is of the utmost importance. (If need be use someone in AU). Do not mention NB name (setting up a new global fund with a potential internal manager) in your discussions. You need to be very careful.

If the final report is longer than 3-5 pages its to long.

At the end of the day, we already know what good looks like, so its just a probity check. This work stream has to be separate from NB.

Let me know how you go.

James

Sent from my iPad

On 8/08/2019, at 12:05 PM, Paul Dyer <[Paul.Dyer@s9\(2\)\(a\)](#)> wrote:

s 9(2)(ba)(i)

Will need budget and ToR. I'm happy to be involved.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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**From:** James Miller <[james@s 9\(2\)\(a\)](#)>  
**Sent:** Thursday, 8 August 2019 11:17 AM  
**To:** Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](#)>  
**Subject:** Re: term sheet.docx

Can you recommend an external fund manager consultant expert to provide us benchmarking service for probity purposes. (Obviously someone respected but trusted).

Ps below looks good.


Sent from my iPad

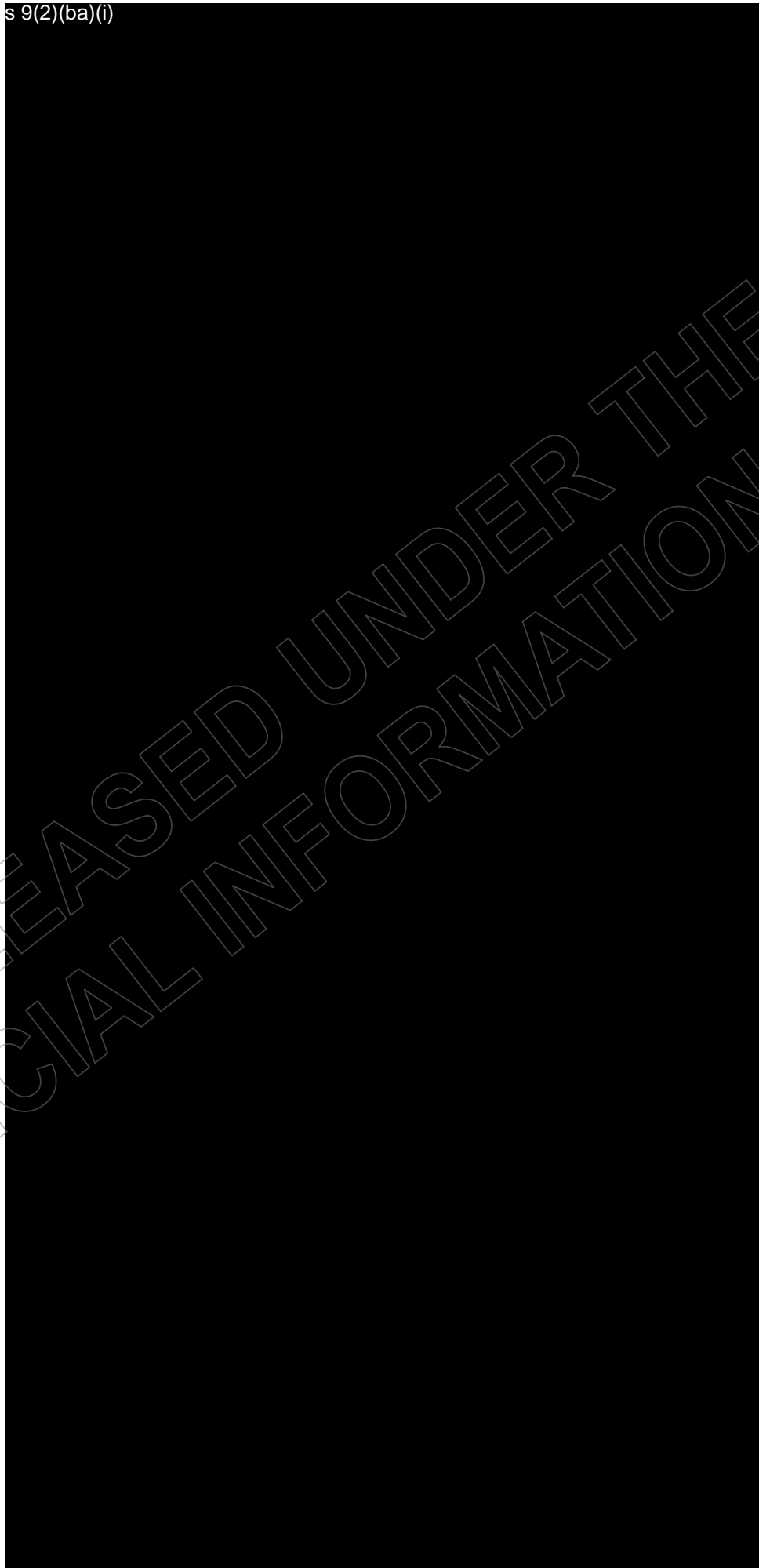
On 7/08/2019, at 9:54 AM, Paul Dyer <[Paul.Dyer@s 9\(2\)\(a\)](#)> wrote:

James

I think what you're after here is assurance that the proposed terms are broadly right and acceptable. The short answer is yes, they are very reasonable. First my detailed thoughts in the order the paper is written, then overall impressions.

s 9(2)(ba)(i)





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### Overall Comments

The starting principle should be the mandate ACC would likely negotiate with a truly arm's length manager of similar capacity. My impression is that the term sheet fully enters into the spirit of this concept. My two comments would be:

- If anything, it errs on the side of being a little too harsh to the manager (e.g. fees, disclosure)
- In places it's a bit halfway between internal and external management (e.g. proposed risk charges). Better to get it on a truly external footing from the start.

It wouldn't be difficult to amend the term sheet to something mutually agreeable. Converting this to a draft contract should then be straightforward. The main caveat is that this is not my area. It needs input from someone more familiar with existing manager contracts than I am (= Peter Scobie). I have not discussed this with him and won't without authority.

P.

**Paul Dyer, Advisor Investments, ACC**

s 9(2)(a)

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---

**From:** James Miller <james@s 9(2)(a)>

**Sent:** Monday, 5 August 2019 1:19 PM

**To:** Paul Dyer <Paul.Dyer@s 9(2)(a)>

**Subject:** term sheet.docx

Probity check, as discussed

James

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**From:** [Scott Pickering](#)  
**To:** [James Miller](#)  
**Cc:** [Paula Rebstock](#)  
**Subject:** Re: Feedback on Governance review / term sheet for externalmanagement  
**Date:** Monday, 5 August 2019 4:39:27 PM

---

Thanks James,

Appreciate the update. Look forward to having a few minutes with you and Paula together on Wednesday either side of Select Committee.

Out of scope

Scott

Scott Pickering  
Chief Executive, ACC

Sent from my iPad

On 5/08/2019, at 2:39 PM, James Miller <[james@s9\(2\)\(a\)](#)> wrote:

Hi Scott and Paula

See below. 1. NB positioning on the terms look fine. I have got Paul assessing from ACC perspective, and I added a number of terms we would want [s 9\(2\)\(b\)\(i\)](#). As we should expect NB to move to capacity quickly. I have asked Sharon for NB salary plus bonus to benchmark the proposal. Also to consider the transition arrangements NB discusses.

Out of scope

Net net, we are moving to a position to move forward. So good news.

James

Sent from my iPad

<https://www.celebratingourexchange.co.nz>

Begin forwarded message:

**From:** Nicholas Bagnall <[nicholasbagnall@s9\(2\)\(a\)](#)>  
**Date:** 5 August 2019 at 9:50:48 AM NZST  
**To:** James Miller <[james@s9\(2\)\(a\)](#)>

**Cc:** Nicholas Bagnall <[Nicholas.Bagnall@s9\(2\)\(a\)](mailto:Nicholas.Bagnall@s9(2)(a))>  
**Subject:** RE: Feedback on Governance review / term sheet for externalmanagement

Hi James

Sorry I've taken so long to come back to you.

I attach two documents – one contains my criticisms of the PWC slides, and the other contains a draft term sheet that I'd propose for managing global equities for ACC.

s 9(2)(ba)(i)  
[Redacted]

Out of scope  
[Redacted]

Regards

Nicholas

Sent from [Mail](#) for Windows 10

---

**From:** [James Miller](#)

**Sent:** Friday, 2 August 2019 9:17 AM

**To:** [Nicholas Bagnall](#)

**Cc:** [Nicholas Bagnall](#)

**Subject:** Re: Feedback on Governance review / term sheet for externalmanagement

Hi Nicholas

Either way it lands, you will reflect on it as a major pivot point in your career. So its important you take the time to get it right.

I was trying to get Paul's workstream to a more concrete stage, so you had something to base your decision upon. But I understand Paul has briefed you, to the effect we are genuinely trying to land on a workable outcome.

Regards

James

Sent from my iPad

<https://www.celebratingourexchange.co.nz>

On 2/08/2019, at 9:05 AM, Nicholas Bagnall  
<[nicholasbagnall@s9\(2\)\(a\)](mailto:nicholasbagnall@s9(2)(a))> wrote:

Hi James

Sorry I've taken so long to get back to you on this –  
[REDACTED] Out  
[REDACTED] of  
[REDACTED] see  
[REDACTED] pe

I said to Paul Dyer that I'd aim to get back to you before the end of this week, but I would like to spend a bit more time on it, so rather than send you my current draft now, I intend to review it again tonight, and send it through to you either tonight or tomorrow morning.

Thanks for your patience!

Regards

Nicholas

Sent from [Mail](#) for Windows 10

<term sheet.docx>

<feedback on PWC draft report.docx>

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