
DECISION NOTICE

To: **Link Acquisition Australia Pty Ltd**
Link Acquisitions Holdings Australia Pty Ltd
Dye and Durham Corporation
Dye and Durham Limited

Date: **12 September 2022**

ACTION

1. For the reasons listed below and pursuant to sections 187(1) of the Financial Services and Markets Act 2000 ("the Act"), the Authority has decided to approve the proposed acquisition ("the Proposed Acquisition") by Link Acquisition Australia Pty Ltd, Link Acquisitions Holdings Australia Pty Ltd, Dye and Durham Corporation and Dye and Durham Limited ("the Proposed Controllers") of 100% shareholding and voting rights in Link Fund Solutions Limited ("LFS") with conditions ("the Conditions") as follows:
 - (1) Prior to the completion of the Proposed Acquisition, the Proposed Controllers must enter into a deed of settlement with the Authority ("the Deed") whereby the Proposed Controllers undertake, jointly and severally, that:

- a) in the event that, following due process by the Authority, in accordance with provisions in the Act and the Authority's published process (including, if referred by LFS to it, a decision of the Upper Tribunal (Tax and Chancery Chamber) ("the Tribunal")), LFS is required by the Authority, pursuant to the Act, to pay restitution and/or redress to the LF Equity Income Fund (previously known as the LF Woodford Equity Income Fund) or to unitholders of it ("the Potential Redress Payments"); and
- b) in the event that LFS is unable to make payment in full of the Potential Redress Payments as they fall due from its available assets and resources, such that there is a shortfall in the total amount owing ("the Potential Shortfall");

then the Proposed Controllers will, subject to Condition (2) below, within 3 months (or such longer period as may be agreed with the Authority), make arrangements for monies to be made available, according to arrangements to be agreed with the Authority, equal to the Potential Shortfall, to enable the Potential Redress Payments to be paid in full.

- (2) The Proposed Controllers will only be required to make up the Potential Shortfall under Condition (1) to enable a total sum payable under the Potential Redress Payments of not more than £306 million.
- (3) The Proposed Controllers must comply with the terms of the Deed.

SUMMARY OF REASONS

- 2. Having considered the facts and matters of the case and having regard to sections 185(2)(a), (b) and (c), 185(3)(a) and 186 of the Act, the Authority considers that there are reasonable grounds for objecting to the Proposed Acquisition on the basis that there is a material risk that LFS will be unable to comply with its prudential requirements (including the threshold condition which requires it to maintain appropriate resources), but that this risk can be satisfactorily mitigated by the imposition of the Conditions.

3. LFS is currently subject to an investigation by the Authority in respect of its management of the LF Woodford Equity Income Fund (“the WEIF”). Although the Authority has not made a determination of the appropriate outcome, the Authority considers that there is a likelihood that it will seek to impose a financial penalty and/or require the payment of restitution. If such a requirement was imposed, LFS would have the right to make representations on whether a requirement for the payment of restitution should be imposed and, if so, in what amount, and/or would retain the right to refer the matter to the Tribunal for independent determination. As such, whether the Potential Redress Payments will be required and, if so, in what amount, remains uncertain. However, the Authority considers that the total sum to be paid by LFS under the Potential Redress Payments may exceed its currently available resources. This would threaten the ability of LFS to comply with its prudential requirements, including the threshold condition which requires it to maintain appropriate resources (“the Appropriate Resources Threshold Condition”).
4. In communications with the Authority, the Proposed Controllers have indicated that, while they are supportive of unitholders of the WEIF achieving appropriate redress (if found to be due), at present, they are not able to commit, prior to the Proposed Acquisition completing, to provide LFS with additional resources beyond LFS’s own resources. As a result, the Authority considers that there is an unacceptable risk that, if the Proposed Acquisition is completed, LFS will be unable to meet its prudential requirements, including the Appropriate Resources Threshold Condition, and there is accordingly a significant risk to the sound and prudent management of LFS.
5. The Authority considers that this risk may be appropriately mitigated by ensuring that, in the event that LFS is required to pay the Potential Redress Payments (and not otherwise), and, if the amount to be paid exceeds the available resources of LFS, monies are made available to LFS which would enable it to meet payment of the Potential Redress Payments. At present, the Authority considers that the quantum of the Potential Redress Payments will not exceed £306 million.
6. Accordingly, the Authority has decided, as a condition of the Proposed Acquisition, to require the Proposed Controllers, to provide a commitment to arrange the provision of such finance as may prove necessary to make up any part of the Potential Shortfall which may result to enable a total sum payable

under the Potential Redress Payments (in the event that such a requirement is imposed on LFS and not otherwise) of £306 million.

7. The Authority has therefore decided to approve the Proposed Acquisition, subject to the imposition of the Conditions.

DEFINITIONS

8. The definitions below are used in this Decision Notice:

“ACD” means authorised corporate director;

“the Act” means the Financial Services and Markets Act 2000;

“the Appropriate Resources Threshold Condition” means the threshold condition relating to the appropriate resources of an authorised person, as set out in paragraph 2D of Part 1B of Schedule 6 to the Act;

“the Authority” means the Financial Conduct Authority;

“the Conditions” means the conditions proposed to be imposed by the Authority on the Proposed Acquisition, set out in paragraph 1 of this Notice;

“the Deed” means the deed described in paragraph 1(1) of this Notice;

“the Investigation” means the Authority’s investigation into the conduct of LFS as ACD of the WEIF;

“LFS” means Link Fund Solutions Limited (FRN 119197);

“the Link Group” means the group of companies of which LFS is part;

“the Potential Redress Payments” means any payments which LFS may be required to make to the WEIF or to unitholders in it as a result of a requirement imposed by the Authority under the Act;

“the Potential Shortfall” means any shortfall which, in the event that a requirement to pay the Potential Redress Payments is made by the Authority, may arise between the available assets and resources of LFS and the total of the Potential Redress Payments;

“the Proposed Acquisition” means the proposed acquisition by the Proposed Controllers of 100% shareholding and voting rights in LFS;

“the Proposed Controllers” means Link Acquisition Australia Pty Ltd, Link Acquisitions Holdings Australia Pty Ltd, Dye and Durham Corporation and Dye and Durham Limited;

“the Tribunal” means the Upper Tribunal (Tax & Chancery Chamber);

“UK UCITS” means a UK undertaking for collective investment in transferable securities, as defined in sections 236A and 237 of the Act;

“the Warning Notice” means the warning notice given the Proposed Controllers on 9 September 2022, proposing to approve the Proposed Acquisition subject to the Conditions; and

“the WEIF” means the LF Woodford Equity Income Fund (called the CF Woodford Equity Income Fund between 2014 and 2017 and, since 14 January 2020, the LF Equity Income Fund) (FRN 635902).

FACTS AND MATTERS

9. LFS is authorised under the Act with permissions to manage a UK UCITS and other funds. By notifications dated 25 March 2022 in respect of Dye and Durham Corporation and Dye and Durham Limited and 10 June 2022 (received after 5pm 13 June) in respect of Link Acquisition Australia Pty Limited and Link Acquisitions Holdings Australia Pty Limited, the Proposed Controllers provided notification of their decision to acquire control of LFS. The Proposed Acquisition forms part of an acquisition by the Proposed Controllers of the group of companies of which LFS is part (“the Link Group”). The parent company of the Link Group is a listed company in Australia and the acquisition of the Link Group is subject to a scheme of arrangement in Australia.
10. LFS is the authorised corporate director (“ACD”) of the WEIF. The WEIF is a sub-fund of the LF Woodford Investment Fund, an open-ended UCITS scheme, authorised by the Authority and opened in May 2014. The WEIF attracted significant investment from a range of investors, including retail consumers. As ACD, LFS was responsible for managing the WEIF, including its liquidity.

11. On 3 June 2019, LFS decided to suspend the WEIF as a result of concerns about its liquidity, meaning that investors could no longer redeem their investments. On 15 October 2019, LFS decided to liquidate the WEIF without reopening it. While distributions to unitholders remain ongoing, it is apparent that the value of many of the assets held within the WEIF has reduced significantly, meaning that unitholders have received, or will receive, significantly less than the previous value of their investments.
12. On 17 June 2019, the Authority appointed investigators under section 168(5) of the Act to carry out an investigation into LFS's conduct as ACD of the WEIF ("the Investigation"). The Investigation has been ongoing since that time.
13. Although it has made no determination of the appropriate outcome, the Authority currently considers that evidence gathered as part of the Investigation is likely to demonstrate that LFS committed misconduct in the course of its management of the WEIF. In the event that the Authority reached such a conclusion, the Authority is likely to seek to initiate enforcement action against LFS. LFS would have the right to challenge the findings of any such action, including by making representations to the Authority and/or by referring the matter to the Tribunal. As such, the outcome remains uncertain.
14. Any enforcement action against LFS may involve the imposition of a requirement to make the Potential Redress Payments to investors adversely affected as a result of any proven breaches of regulatory requirements by LFS. LFS would have the right to challenge any such requirement, including by making representations to the Authority and/or by referring the matter to the Tribunal. As such, the quantum of the Potential Redress Payments (if LFS is made subject to such a requirement) is uncertain.
15. At present, the Authority considers that the total of the Potential Redress Payments to be made (if LFS is made subject to such a requirement) will not exceed £306 million.
16. In its latest regulatory return, LFS reported that it holds capital of [REDACTED]. This figure is above LFS's minimum capital requirement of [REDACTED]. The Authority understands that, in addition, in respect of any requirement to pay the Potential Redress Payments (if made), LFS may benefit from insurance coverage up to the sum of [REDACTED].

17. As such, the Authority currently considers that there is a likelihood that the quantum of the Potential Redress Payments may exceed the financial assets currently available to LFS. As such, the Authority considers that, in the event that a requirement to make the Potential Redress Payments was made, and the quantum of the Potential Redress Payments exceeded LFS's currently available assets, LFS would be unable to pay such financial orders while continuing to comply with the Appropriate Resources Threshold Condition.
18. In communications with the Authority, the Proposed Controllers have confirmed that, while they are supportive of the unitholders of the WEIF achieving appropriate redress (if due), prior to the Proposed Acquisition completing, beyond agreeing to retain within LFS its currently available assets and resources, they are not able to make any commitment to the provision of further financial support for the Potential Redress Payments beyond LFS's own resources.
19. On 9 September 2022, the Authority gave the Proposed Controllers a warning notice ("the Warning Notice"), proposing to approve the Proposed Acquisition subject to the Conditions. The Proposed Controllers made representations to the Authority on 11 September 2022 and 12 September 2022 in which they asserted that the Authority should not make approval of the Proposed Acquisition subject to the Conditions. The Authority has considered these representations in making this decision.

IMPACT OF THE ASSESSMENT CRITERIA

20. The regulatory provisions relevant to this Decision Notice are referred to in Annex A.
21. When assessing the proposed acquisition of an authorised person, the Authority is required to consider the financial soundness of the acquisition in order to ensure the sound and prudent management of the authorised person and may object to a proposed acquisition only if there are reasonable grounds for doing so on the basis of various matters set out in section 186 of the Act, which include whether the authorised person will be able to comply with its prudential requirements (which includes the Appropriate Resources Threshold Condition).

22. The Authority considers that there are reasonable grounds to object to the Proposed Acquisition since, if the Proposed Acquisition is completed, and in the event that the Authority requires LFS to make the Potential Redress Payments and the quantum exceeds its available assets and resources, there is a risk that LFS will be unable to pay the Potential Redress Payments.
23. As a result, the Authority considers that, in the absence of appropriate conditions, it would propose to object to the Proposed Acquisition. However, the Authority considers that its concerns about LFS's ability to meet the Potential Redress Payments could be satisfactorily mitigated by imposing conditions on its approval of the Proposed Acquisition which ensure that, in the event that a requirement is imposed to make the Potential Redress Payments, and LFS is unable to make the Potential Redress Payments in full from its available assets and resources, the Proposed Controllers will commit to make arrangements which make up the Potential Shortfall.
24. To that end, the Authority considers it appropriate to impose the Conditions on its approval of the Proposed Acquisition which require the Proposed Controllers to commit to arranging the provision of any finance necessary to meet any part of the Potential Shortfall in the Potential Redress Payments, so as to enable a maximum total sum payable under the Potential Redress Payments of £306 million to be payable.
25. The Authority has considered representations made by the Proposed Controllers in respect of the Warning Notice. These assert that the approval should not be made subject to the Conditions. The Authority nevertheless considers, for the reasons outlined in this Decision Notice, that it is appropriate to impose the Conditions.
26. The Authority has therefore decided to approve the Proposed Acquisition subject to the Conditions.

PROCEDURAL MATTERS

Decision maker

27. The decision which gave rise to the obligation to give this Decision Notice was made by the Executive Decision Maker.
28. This Decision Notice is given under section 189(7) and in accordance with section 388 of the Act. The following statutory rights are important.

The Tribunal

29. Each of the Proposed Controllers has the right to refer the matter to which this Decision Notice relates to the Tribunal. Under paragraph 2(2) of Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Proposed Controllers have 28 days from the date on which this Decision Notice is given to each of them to make a reference to the Tribunal. A reference to the Tribunal is made by way of a signed reference form (Form FTC3) filed with a copy of this Decision Notice. The Tribunal's contact details are: The Upper Tribunal (Tax and Chancery Chamber), Fifth Floor, Rolls Building, Fetter Lane, London EC4A 1NL (tel: 020 7612 9730; email: uttc@justice.gov.uk).
30. Further information on the Tribunal, including guidance and a link to 'Forms and further guidance' which includes Form FTC3 and notes on that form, can be found on the HM Courts and Tribunal Service website: <https://www.gov.uk/courts-tribunals/upper-tribunal-tax-and-chancery-chamber>.
31. A copy of Form FTC3 must also be sent to Alexander Walsh at the Financial Conduct Authority, 12, Endeavour Square, London, E20 1JN (email alexander.walsh@fca.org.uk) at the same time as filing a reference with the Tribunal.
32. Once any such referral is determined by the Tribunal and subject to that determination, or if the matter has not been referred to the Tribunal, the Authority will issue a Final Notice about the implementation of that decision.

Access to evidence

33. Section 394 of the Act does not apply to this Decision Notice.

Confidentiality and publicity

34. This Decision Notice may contain confidential information and should not be disclosed to a third party (except for the purpose of obtaining advice on its contents). Section 391(1A) of the Act provides that a person to whom a Decision Notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details.
35. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Decision Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Decision Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to the Proposed Controllers, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

FCA contacts

36. For more information concerning this matter generally, contact Alexander Walsh, Manager, Change in Control at the FCA (direct line: 020 7066 0008 / email: alexander.walsh@fca.org.uk).

Emily Shepperd, Executive Director of Authorisations

ANNEX A – REGULATORY PROVISIONS RELEVANT TO THIS DECISION NOTICE

Relevant Statutory Provisions

Change in control

1. The requirement to notify the Authority when deciding to acquire control of an authorised firm is set out in section 178 of the Act. It states that:
 - 1) A person who decides to acquire or increase control over a UK authorised person must give [the Authority] notice in writing before making the acquisition.
 - 2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.
 - 3) In this Part, a notice given under this section is a “section 178 notice” and a person giving notice is a “section 178 notice-giver”.
2. Acquiring control of a firm is defined in section 181 of the Act, as varied by regulations issued under section 192 of the Act, as beginning to hold: 20% or more of the shares in the firm, or its parent undertaking, 20% of the voting power in the firm or shares or voting power as a result of which a person is able to exercise significant influence over the management of the firm.
3. Section 185 of the Act provides that:
 - (1) Where [the Authority] receives a section 178 notice, it must—
 - a) determine whether to approve the acquisition to which it relates unconditionally; or
 - b) propose to—
 - (i) approve the acquisition subject to conditions (see section 187); or
 - (ii) object to the acquisition.
 - (2) [The Authority] must—

- a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
 - b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
 - c) disregard the economic needs of the market.
- (3) [The Authority] may only object to an acquisition—
- a) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
 - b) if the information provided by the section 178 notice-giver is incomplete.
4. Section 186 of the Act provides that the matters specified in section 185(3)(a) are—
- a) the reputation of the section 178 notice-giver;
 - b) the reputation, knowledge, skills and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;
 - c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;
 - d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
 - e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
 - (i) exercise effective supervision;
 - (ii) exchange information among regulators; and
 - (iii) determine the allocation of responsibility among regulators; and

- f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
 - (i) money laundering or terrorist financing (as defined in regulation 3(1) of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) is being or has been committed or attempted; or
 - (ii) the risk of such activity could increase.
5. Section 187 of the Act provides:
- (1) [The Authority] may impose conditions on its approval of an acquisition.
 - (2) [The Authority] may only impose conditions where-
 - a) If it did not impose those conditions, it would object to the acquisition, or
 - b) It is required to do so by a direction under section 187A(3)(b) or section 187B(3).
 - (3) [The Authority] may not impose conditions requiring a particular level of holding to be acquired.
 - (4) [The Authority] may vary or cancel the conditions.
6. Section 189 of the Act sets out the procedure by which the Authority must assess the section 178 notice. It provides:
- (1) The Authority must act under section 185 within a period of 60 working days beginning with the day on which the Authority acknowledges receipt of the section 178 notice (“the assessment period”).
 - (2) The assessment period may be interrupted, no more than once, in accordance with section 190.
 - (3) The Authority must inform the section 178 notice-giver in writing of—
 - (i) the duration of the assessment period;
 - (ii) its expiry date; and

- (iii) any change to the expiry date by virtue of section 190.
 - (4) The Authority must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—
 - (i) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
 - (ii) give a Warning Notice stating that it proposes to—
 - a. approve the acquisition subject to conditions; or
 - b. object to the acquisition.
 - (5) Where the Authority gives a Warning Notice stating that it proposes to approve the acquisition subject to conditions—
 - (i) it must, in the Warning Notice, specify those conditions; and
 - (ii) the conditions take effect as interim conditions.
 - (6) The Authority is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
 - (i) given notice under subsection (4); nor
 - (ii) informed the section 178 notice-giver that the section 178 notice is incomplete.
 - (7) If the Authority decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a Decision Notice.
 - (8) Following receipt of a Decision Notice under this section, the section 178 notice-giver may refer the Authority's decision to the Tribunal.
7. Section 191F of the Act provides (as relevant):
- (3) A person who contravenes an interim condition in a warning notice given under section 189(4)(b)(i) or a condition in a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

- (8) A person guilty of an offence under subsection ... (3) ... is liable-
- (a) on summary conviction to a fine not exceeding the statutory maximum;
or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

Threshold conditions

8. The threshold conditions are the minimum requirements which any authorised person must meet. In respect of authorised persons which are not PRA-authorised persons, these are set out in Part 1B of Schedule 6 to the Act. Paragraph 2D of Part 1B of Schedule 6 to the Act sets out the Appropriate Resources Threshold Condition. It states (as relevant):

(1) The resources of [the authorised person] must be appropriate in relation to the regulated activities that [the authorised person] carries on or seeks to carry on.

(2) The matters which are relevant in determining whether [the authorised person] has appropriate resources include—

- (a) the nature and scale of the business carried on, or to be carried on, by [the authorised person];

- (b) the risks to the continuity of the services provided by, or to be provided by, [the authorised person];

- (c) [the authorised person]'s membership of a group and any effect which that membership may have.

(3) Except in a case within sub-paragraph (3A), the matters which are relevant in determining whether [the authorised person] has appropriate financial resources include—

- (a) the provision [the authorised person] makes and, if [the authorised person] is a member of a group, which other members of the group make, in respect of liabilities;

- (b) the means by which [the authorised person] manages and, if [the authorised person] is a member of a group, by which other members of the

group manage, the incidence of risk in connection with [the authorised person]'s business.

Relevant Guidance

Supervision Manual

9. Relevant guidance is contained in Chapter 11 of the Supervision Manual ("SUP"), which is part of the Regulatory Processes section of the Authority's Handbook. SUP 11.7.1G refers to the statutory approval requirements contained in sections 185 and 186 of the Act.
10. SUP 11 Annex 6G refers to the aggregation of holdings for the purpose of prudential assessment of controllers.