



Legal Structures

Objectives

- Confirm the understanding of the different legal models
- Confirm the governance and decision making arrangements for each model
- Agree the criteria that ACCESS should use in choosing its preferred option
- Agree a preferred option for inclusion in the draft July submission

Options for Legal Structures

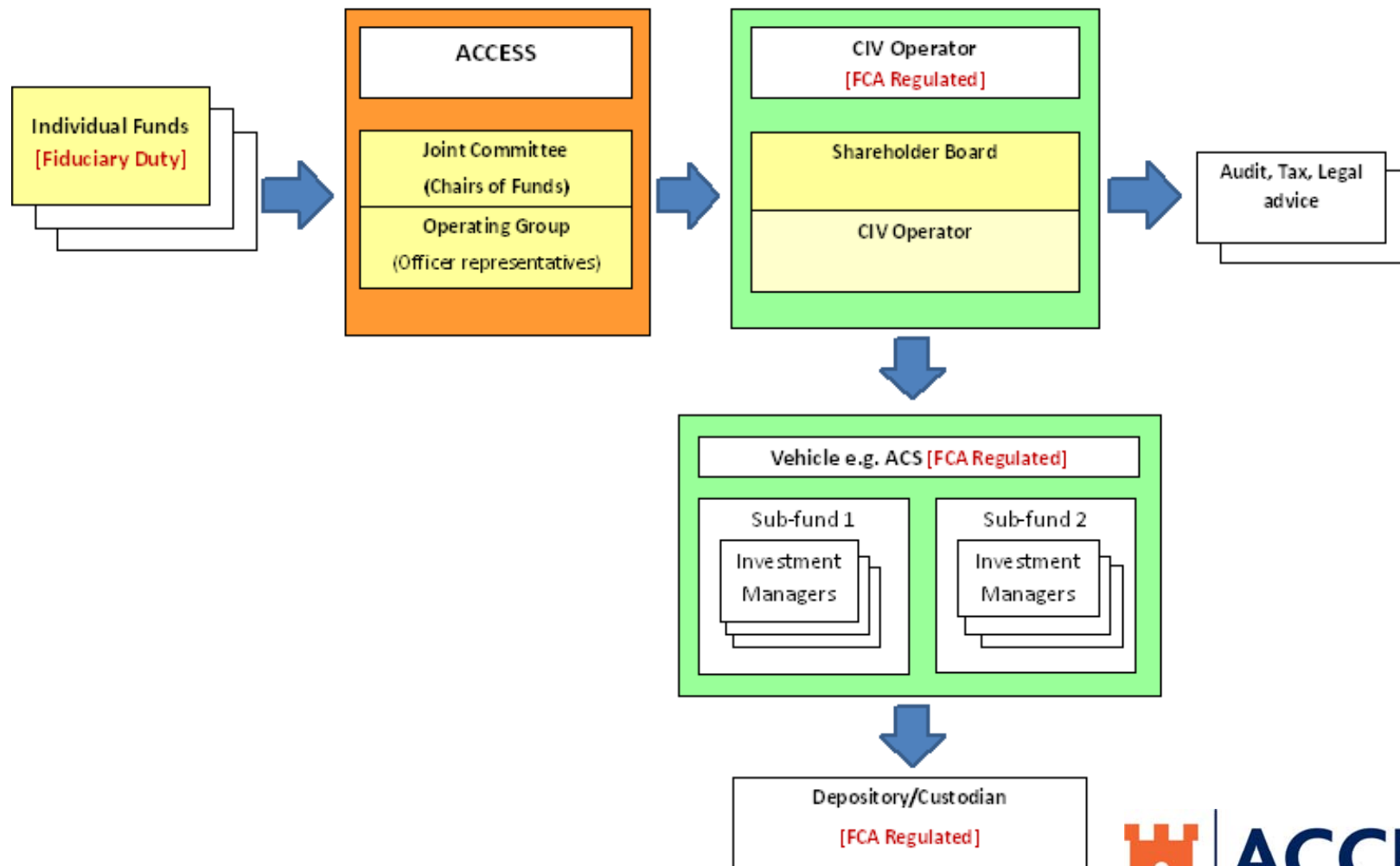
1a – Collective Investment Vehicle (CIV), own

1b – Collective Investment Vehicle (CIV), rent

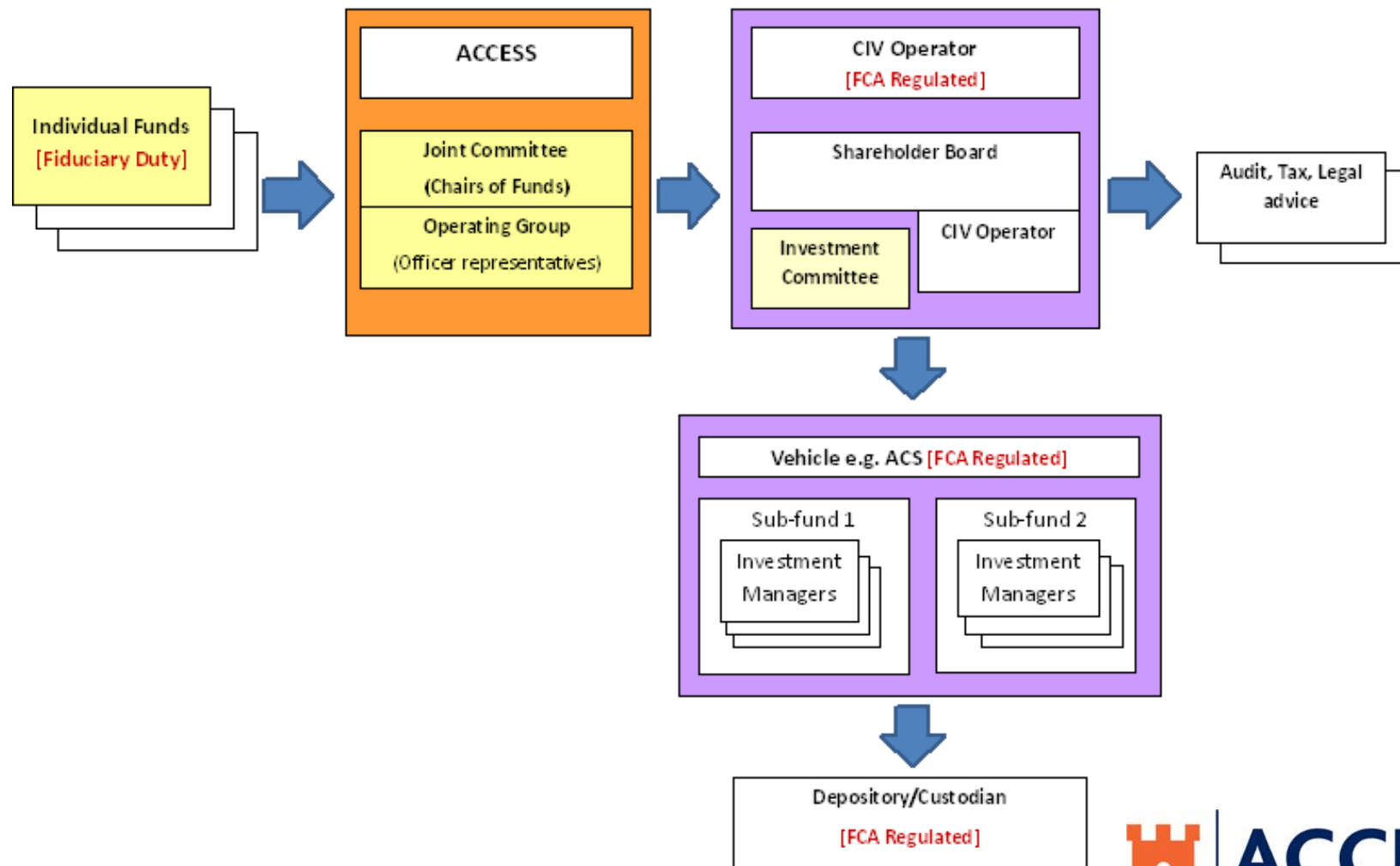
2 – Collective Asset Pool (CAP)

3 – Hybrid, CAP with a Regulated Investment Manager (owned)

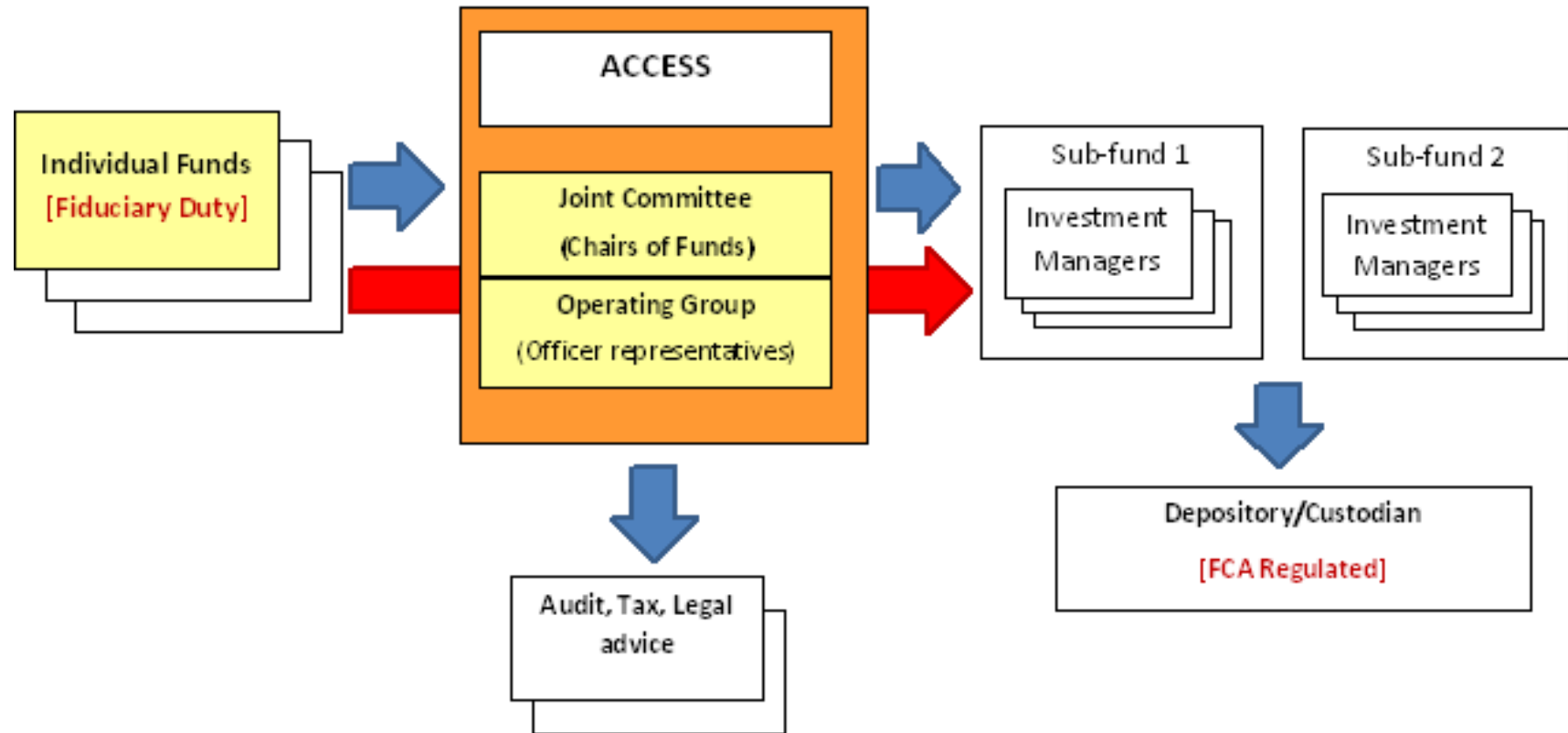
Option 1a – CIV (owned)



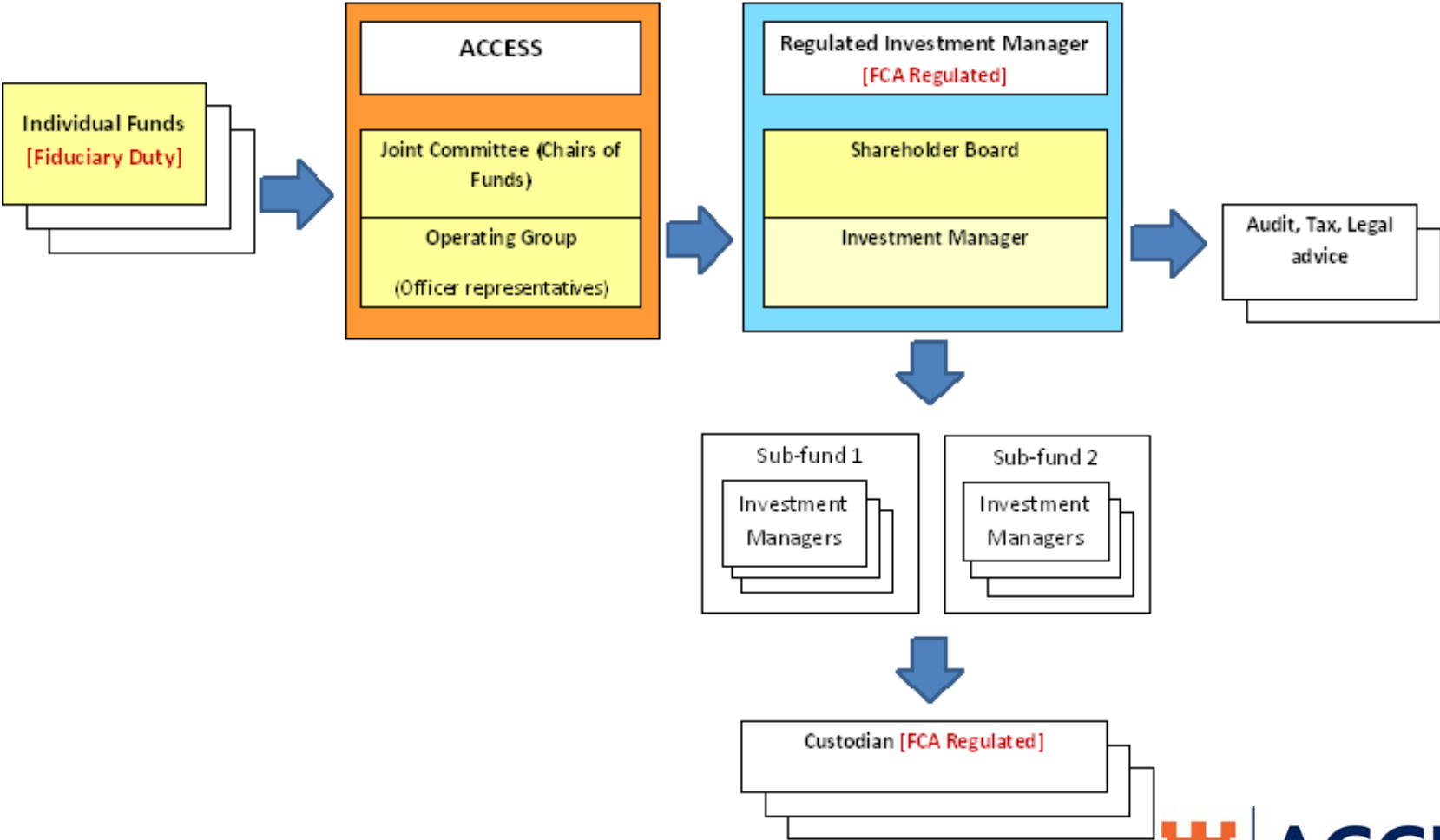
Option 1b – CIV (rent)



Option 2 – CAP



Option 3 – Hybrid Regulated Investment Manager (owned)

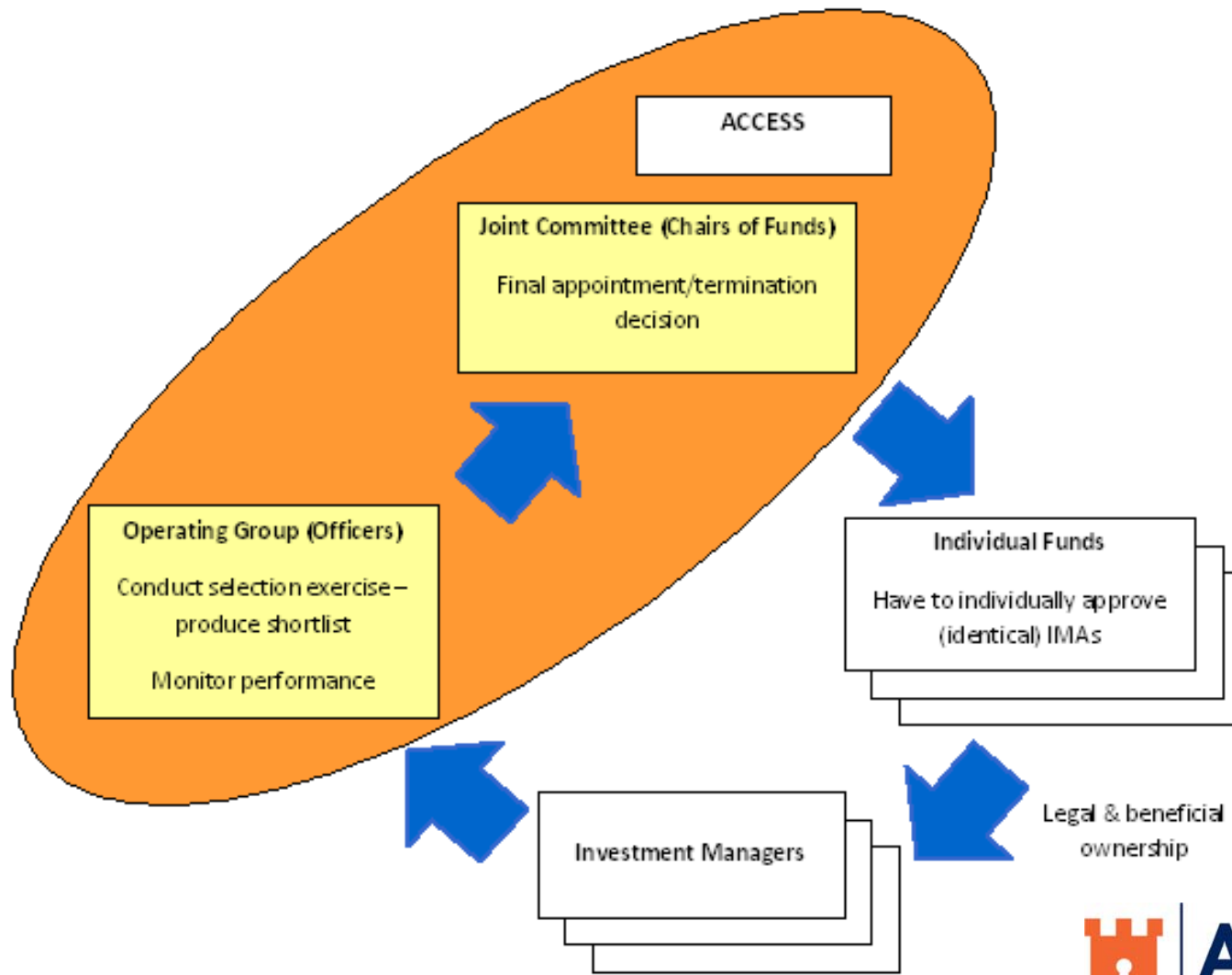


Governance Arrangements – Appointment of Investment Managers

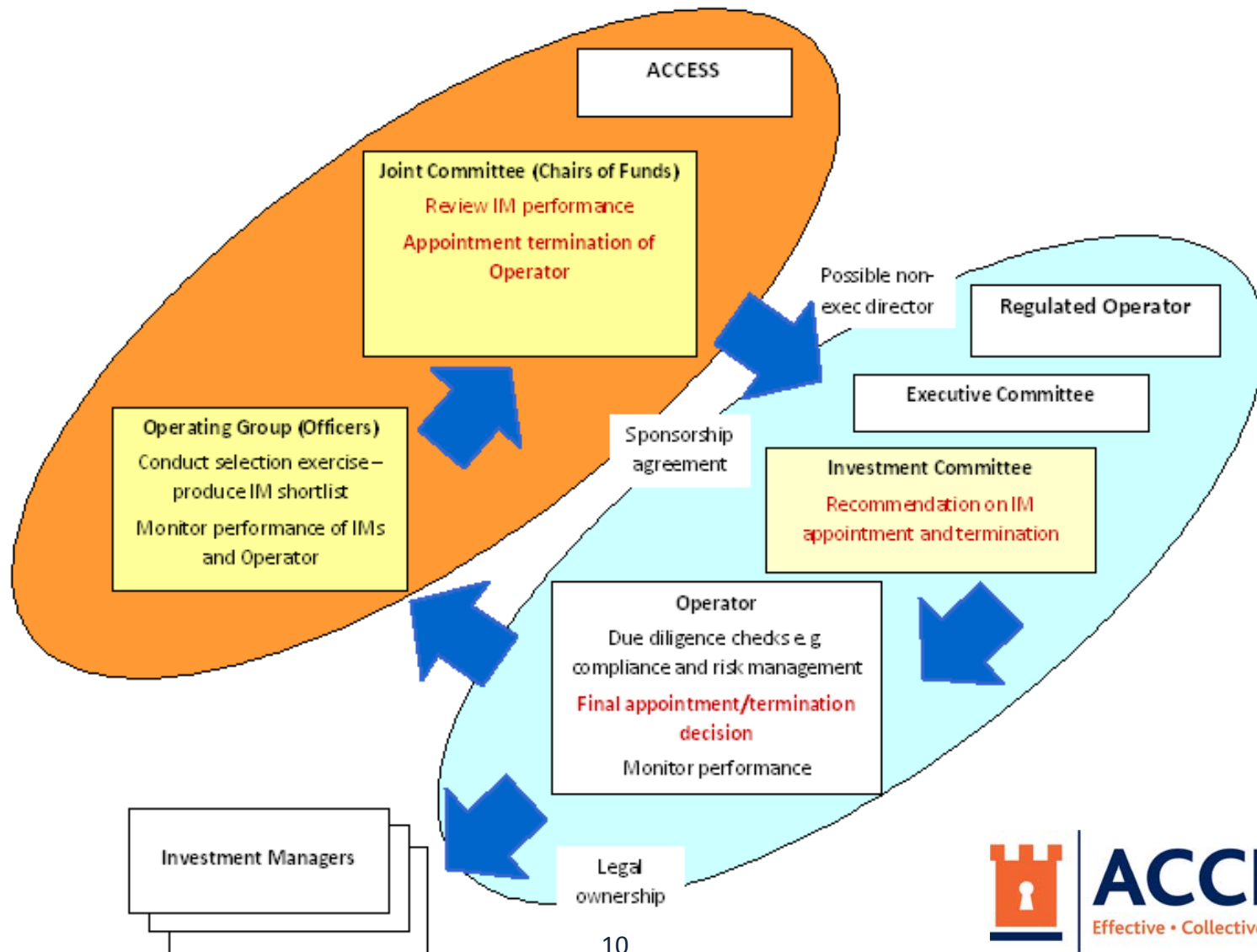
The Governance of each model will vary depending on each option, both in terms of regulatory responsibility and ownership:

- In a regulated model the legal responsibility for the appointment of investment managers rests with the regulated operator
- However, investors can exercise a significant degree of direction in the appointment
- The degree of control may be (and/or feel) different depending on whether the operator is owned or rented

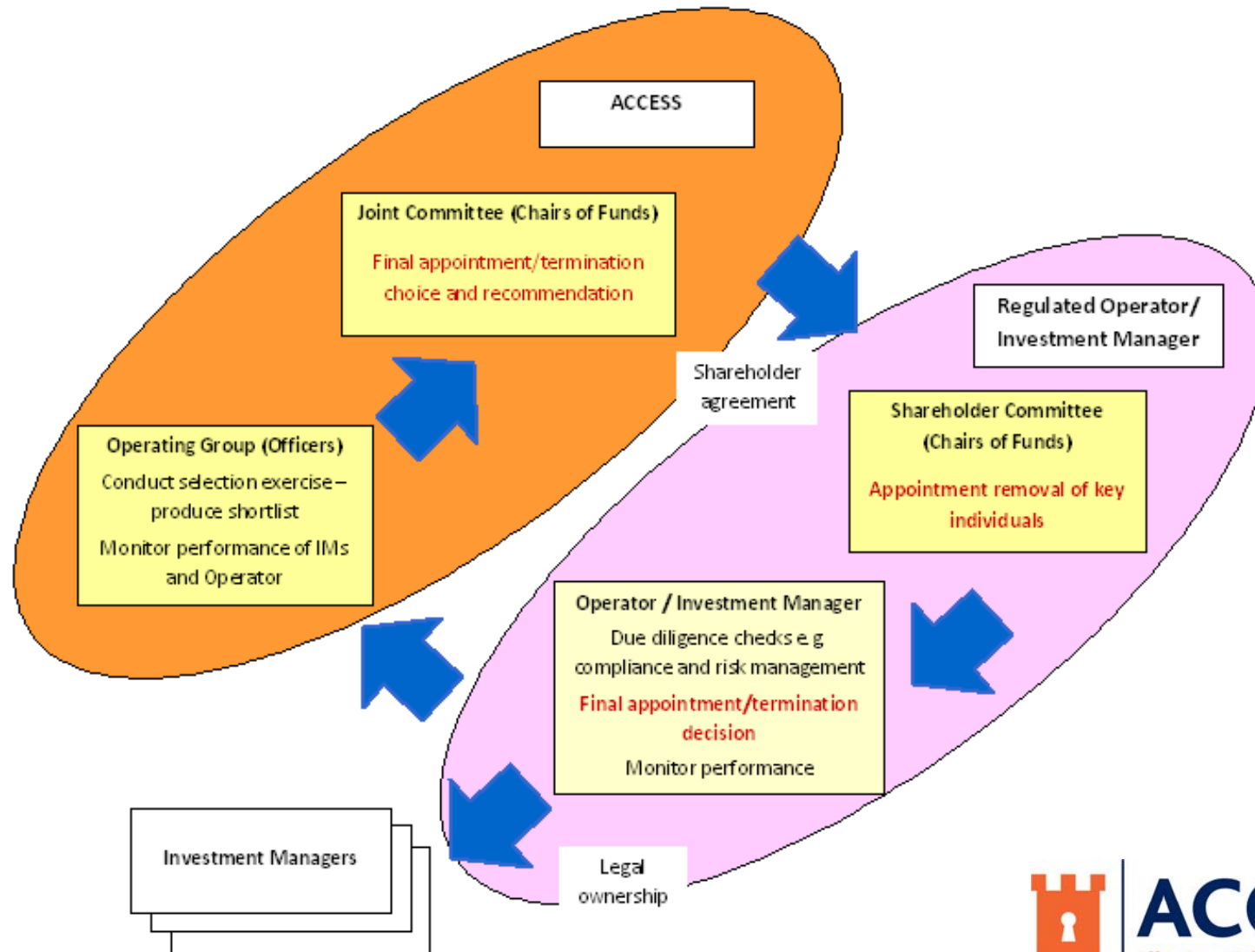
Governance - Option 2 CAP



Governance - Option 1b CIV rent



Governance - Option 1a or 3



Financial Services & Markets Act (FSMA)

Key Risks (1)

Decision making and advice – Investment decisions e.g. the selection of an investment manager, cannot be made on behalf of investors by an unregulated entity

- This is very difficult to mitigate for 11 Authorities working together
- To mitigate this each Authority would clearly need to make its own investment decision, which then makes it very hard to satisfy the Government's pooling criteria

Financial Services & Markets Act (FSMA)

Key Risks (2)

Collective Investment Schemes– if there is seen to be any sharing of the benefit of ownership, an unregulated CIS will be in breach of the regulations. This is an ongoing risk through the establishment, operation and winding up of a scheme.

- This can be mitigated through separate Investment Manager agreements and custody accounts.
- This could be removed if the Government were to grant an exemption for the LGPS, as it has for corporate schemes

Government's Requirements – November 2015 Criteria

- 'The Government expects that implementation of the investment strategy will be delegated to officers or the pool'
- 'Manager selection will need to be undertaken at the pool level'
- 'As a minimum, we would expect to see the selection of external fund managers and the implementation of investment strategy to be carried out at the pooled level'
- 'Formal mechanisms for pooling, such as collective investment vehicles, offer additional benefits to alternative arrangements, such as procurement frameworks'

Government's Requirements – Easter 2016 letter

‘The structure, standards and systems required for an entity regulated by the FCA provide substantial assurance. As a minimum I expect to see a single entity at the heart of any proposal, responsible for selecting and contracting with managers’

ACCESS' Objectives

1. Enable participating authorities to execute their fiduciary responsibilities to LGPS stakeholders, including scheme members and employers, **as economically as possible.**
2. Provide a range of asset types necessary to enable those participating authorities to execute their locally decided investment strategies as far as possible.
3. Enable participating authorities to achieve the benefits of pooling investments, preserve the best aspects of what is currently done locally, and **create the desired level of local decision making and control.**

ACCESS' Principles

1. The participating authorities will work collaboratively.
2. Participating authorities will have an equitable voice in governance.
3. **Decision making will be objective and evidence based.**
4. The pool will use professional resources as appropriate.
5. The risk management processes will be appropriate to the pool's scale, recognising it as one of the biggest pools of pension assets in the UK.
6. **The pool will avoid unnecessary complexity.**
7. **The pool will evolve its approach to meet changing needs and objectives.**
8. The pool will welcome innovation.
9. **The pool will be established and run economically, applying value for money considerations.**
10. The pool's costs will be shared equitably.
11. The pool is committed to collaboration with other pools where there is potential to maximise benefits.



ACCESS
Effective • Collective • Investment

Considerations – avoid unnecessary complexity

- Timescales involved to setup and start achieving savings
- Legal and regulatory processes to create a company and achieve necessary FCA approval
- Procurement process to buy-in a CIV operator

Considerations – established and run economically

- Established in Project Pool that both formal pooling (CIVs) and less formal arrangements should achieve the same levels of savings on Investment Managers fees
- Consider set-up and ongoing costs
- Regulatory capital for establishing FCA regulated entities (Options 1a and 3) must be borne by Administering Authorities, and cannot be borrowed from pension funds
- Withholding tax variations between vehicles and LGPS fund's own status, estimating the net difference is very difficult but this could be significant and further advice will be sought
- Cost to change beneficial ownership to a new entity – difficult to estimate the changes that would not otherwise be a result of consolidation, but could be significant and further advice will be sought

Considerations – potential for innovation

- Reflect that companies solely owned by the Authorities will be easier to change and influence
- Particularly significant if using a third party CIV Operator (Option 1b) there is a risk that the market is immature and suppliers will not have the necessary capacity or motivation to respond to customers
- Contracts with external suppliers will require a certain level of commitment and may be difficult or costly to change once implemented

Considerations – local decision making and control

- Regulated entities (Options 1a, 1b and 3) will have ultimate responsibility for the appointment of Investment Managers, but the pool can have meaningful influence
- An entity solely owned by the Authorities will have a different look and feel to an third party supplier, ultimately the Authorities, as shareholders, will control the key company appointments; but the only recourse is to remove the supplier and reappoint another company

Officers' Option Appraisal

	Avoid unnecessary complexity	Established and run economically	Potential for Innovation	Desired level of decision making and control	Legal and Regulatory Compliance		Meet Government's pooling criteria
					Investment Decision Making	Collective Investment Scheme	
1 (a) CIV – Own	✗	✗✗✗	✓	✓	✓	✓	✓✓
1 (b) CIV – Rent	✓	✗	✗	✓	✓	✓	✓✓
2 CAP	✓✓	✓✓	✓	✓✓	✗	?	✗
3 Hybrid	✓	✓	✓✓	✓✓	✓	?	✓

Agree a proposed Legal Structure for ACCESS

- Members are asked to agree their preferred Legal Structure.
- This structure will form the basis of ACCESS draft July Submission.
- The July Submission will need to be approved by each Authority individually.