Commission Delegated Regulation (EU) 2019/820 of 4 February 2019 supplementing Regulation (EU) No 345/2013 of the European Parliament and of the Council with regard to conflicts of interest in the area of European venture capital funds (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/820

of 4 February 2019

supplementing Regulation (EU) No 345/2013 of the European Parliament and of the Council with regard to conflicts of interest in the area of European venture capital funds

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds[(1)], and in particular Article 9(5) thereof,

Whereas:

(1) To ensure effective control and management of conflicts of interest in the area of European venture capital funds, it is important to specify the situations where conflicting interests are likely to occur.

(2) In the context of qualifying venture capital funds, the types of conflict of interest differ depending on the role, interests and incentives of the persons involved. To facilitate the identification of conflicts of interest in that context, it is necessary to establish a list of situations deemed to give rise to conflicts of interest. That list should be sufficiently broad to cover any type of conflict of interest that may arise in the area of European venture capital funds. Therefore, the types of conflict of interest should include situations where there is a prospect of financial gain or avoidance of financial loss, or where incentives are provided in a way that favours particular interests at the expense of the interests of the qualifying venture capital fund or investors therein.

(3) Managers of qualifying venture capital funds should adopt procedures and measures to ensure that persons engaged in such business activities carry out those activities in the best interests of the qualifying venture capital funds and their investors. To achieve a harmonised level of investor protection in the Union, and to enable those managers to adopt and follow a consistent and effective practice to prevent, monitor and manage conflicts of interest, a minimum set of steps should be listed in their conflicts of interest policy. To avoid unnecessary administrative burdens while ensuring an appropriate level of investor protection, the conflicts of interest policies should be adapted to the nature, scale and complexity of the managers' businesses.

Changes to legislation: *Commission Delegated Regulation (EU) 2019/820 is up to date with all changes known to be in force on or before 24 December 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(4) The procedures and measures set out in the conflicts of interest policies may be insufficient to protect the interests of the qualifying venture capital fund or its investors, in which case managers of qualifying venture capital funds should take the necessary additional steps to protect those interests. Those steps should include informing the senior management or other competent internal body of the qualifying venture capital fund, and taking the necessary decisions or actions to act in the best interest of the qualifying venture capital or its investors.

(5) Managers of qualifying venture capital funds may be active in the management of companies in which the qualifying venture capital funds invest. To prevent conflicts of interest and to ensure that those managers' voting rights are exercised for the benefit of both the qualifying venture capital fund concerned and its investors, it is necessary to specify detailed requirements in relation to the exercise of those voting rights. To ensure a sufficient standard of investor protection, managers of qualifying venture capital funds should develop adequate and effective strategies in that respect and provide upon request a summary of those strategies and the actions they have taken.

(6) To secure the effectiveness of the disclosure of conflicts of interest, the information provided should be regularly updated. Given the inherent risks of using a website as a tool to disclose conflicts of interest, it is necessary to lay down criteria for the publication of that information on a website.

(7) To enable managers of qualifying venture capital funds to adapt to the new requirements, the date of application of this Regulation should be deferred by six months,

HAS ADOPTED THIS REGULATION:

Article 1

Types of conflict of interest

For the purposes of Article 9(2) of Regulation (EU) No 345/2013, the types of conflict of interest shall be situations where a manager of a qualifying venture capital fund, a person who effectively conducts the business of that manager, an employee, or any person who directly or indirectly controls or is controlled by that manager by another qualifying venture capital fund or a collective investment undertaking, including an undertaking for collective investment in transferable securities (UCITS), managed by the same manager, or the investor therein,

(a) is likely to make a financial gain, or avoid a financial loss, at the expense of the qualifying venture capital fund or its investors;

(b) has an interest in the outcome of a service or an activity provided to the qualifying venture capital fund or to its investors which is distinct from the interest of the qualifying venture capital fund or its investors;

(c) has an interest in the outcome of a transaction carried out on behalf of the qualifying venture capital fund or its investors which is distinct from the interest of the qualifying venture capital fund or its investors;

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(d) has a financial or other incentive to favour:

— the interest of an investor, a group of investors or another collective investment undertaking, including a UCITS, over the interest of the qualifying venture capital fund or its investors;

— the interest of one investor in the qualifying venture capital fund over the interest of another investor or group of investors in that fund;

(e) carries out the same activities for the qualifying venture capital fund, another collective investment undertaking, including a UCITS, or an investor;

(f) pays or is paid any fee or commission, or provides or is provided with any non-monetary benefits, other than those laid down in Article 24(1) of Commission Delegated Regulation (EU) No 231/2013[(2)];

(g) influences and has a personal interest in influencing the development of a qualifying portfolio undertaking to the disadvantage of the qualifying venture capital fund or its investors or at the expense of the achievement of the objectives of the qualifying venture capital fund.

Article 2

Conflicts of interest policy

1 A manager of a qualifying venture capital fund shall establish, implement and maintain a written conflicts of interest policy that is appropriate to the size and organisational structure of that manager given the nature, scale and complexity of its business.

2 The conflicts of interest policy referred to in paragraph 1 shall identify, in line with Article 1, the circumstances that may give rise to a conflict of interest and shall specify the measures to be adopted and the procedures to be followed on an ongoing basis.

Article 3

Procedures and measures to prevent, manage and monitor conflicts of interest

The measures to be adopted and procedures to be followed referred to in Article 2(2) shall include at least the following steps:

(a) the prohibition of the exchange of information between the persons or entities referred to in Article 1, where such an exchange of information could lead to or facilitate a conflict of interest;

(b) the separation of the supervision of persons or entities referred to in Article 1 whose interests may conflict;

(c) the removal of the connection between or dependence on the remuneration of the persons or entities referred to in Article 1 principally engaged in one activity, and the remuneration of, or revenues generated by, persons or entities principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) the prevention of persons or entities referred to in Article 1 from exercising inappropriate influence over the management of the qualifying venture capital fund;