Commission Delegated Regulation (EU) 2019/819 of 1 February 2019 supplementing Regulation (EU) No 346/2013 of the European Parliament and of the Council with regard to conflicts of interest, social impact measurement and information to investors in the area of European social entrepreneurship funds (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2019/819

of 1 February 2019

supplementing Regulation (EU) No 346/2013 of the European Parliament and of the Council with regard to conflicts of interest, social impact measurement and information to investors in the area of European social entrepreneurship 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 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds[(1)], and in particular Article 9(5), Article 10(2) and Article 14(4) thereof,

Whereas:

(1) Managers of qualifying social entrepreneurship 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 social entrepreneurship 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.

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

(3) Managers of qualifying social entrepreneurship funds may be active in the management of companies in which the qualifying social entrepreneurship funds invest. To prevent conflicts of interest and to ensure that those managers' voting rights are exercised for the benefit of both the qualifying social entrepreneurship 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

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social entrepreneurship 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.

(4) 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.

(5) To ensure a consistent approach as regards procedures used by managers of qualifying social entrepreneurship funds to measure the achievement of positive social impact by the qualifying portfolio undertakings, specific elements should be incorporated in those procedures. The resources used by the qualifying portfolio undertakings as well as the products and services made available by those undertakings are key indicators of positive social impact, which should therefore form an integral part of those procedures. To distinguish social enterprises from undertakings that achieve social objectives only incidentally, an evaluation of the outcomes generated by the qualifying portfolio undertakings should also form part of those procedures.

(6) It should be ensured that the pre-contractual information provided to investors contains sufficient details about the qualifying social entrepreneurship fund. The description of the investment strategy and objectives of the qualifying social entrepreneurship fund should therefore contain descriptions of the social sectors, the geographical areas and the legal forms of the qualifying portfolio undertakings in which the qualifying social entrepreneurship fund intends to invest, as well as information on the distribution of those undertakings' profits.

(7) Investors should be provided with the information necessary to assess the underlying methodologies used by the manager of the qualifying social entrepreneurship fund to measure social impact. The pre-contractual information should therefore specify whether the manager of the qualifying social entrepreneurship relied upon internal methodologies, or used generally accepted methodologies. Pre-contractual information should also contain a description of the main features of the methodologies, including the screening criteria, the relevant indicators and an explanation of how the manager of the qualifying social entrepreneurship fund ensures compliance with those methodologies.

(8) Investors should be able to verify whether the manager of the qualifying social entrepreneurship fund follows the investment policy when selecting non-qualifying assets. The pre-contractual information should therefore include information about the types of non-qualifying assets in which the qualifying social entrepreneurship fund invests, investment techniques, relevant restrictions, and the sector of activity and the geographical area in which those investments are made.

(9) In the interest of transparency, investors should be provided with the information necessary to assess the nature and extent of the business support services and the other support activities the manager of a qualifying social entrepreneurship fund is providing or arranging through third parties. Pre-contractual information on business

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support services and the other support activities should therefore describe the types of the services and activities it provides.

(10) To enable managers of qualifying social entrepreneurship 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 346/2013, the types of conflict of interest shall be situations where a manager of a qualifying social entrepreneurship 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 social entrepreneurship 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 social entrepreneurship fund or its investors;

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

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

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

  (i) the interest of an investor, a group of investors or another collective investment undertaking, including a UCITS, over the interest of the qualifying social entrepreneurship fund or its investors;

  (ii) the interest of one investor in the qualifying social entrepreneurship fund over the interest of another investor or group of investors in that fund;

(e) carries out the same activities for the qualifying social entrepreneurship 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 social entrepreneurship fund or its investors or at the expense of the achievement of the objectives of the qualifying social entrepreneurship fund.

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Article 2

Conflicts of interest policy

1 A manager of a qualifying social entrepreneurship 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 social entrepreneurship fund;

(e) the prevention or control of the involvement of persons or entities referred to in Article 1 in any activity that may lead to a conflict of interest.

Article 4

Managing the consequences of conflicts of interest

Where the measures and procedures set out in the conflicts of interest policy pursuant to Article 2(2) and Article 3 are insufficient to prevent, with reasonable confidence, the risks of damage to the interests of the qualifying social entrepreneurship fund or its investors, managers of a qualifying social entrepreneur fund shall take the following steps:

(a) promptly inform their senior management or other competent internal body, or the senior management or other competent internal body of the qualifying social entrepreneurship fund, of the risk of damage to the interests of that fund or its investors;

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(b) take any decision or action to ensure that they act in the best interest of the qualifying social entrepreneurship fund or its investors.

Article 5

Strategies for the exercise of voting rights to prevent conflicts of interest

1 Managers of qualifying social entrepreneurship funds shall develop in writing adequate and effective strategies for determining when and how to exercise voting rights held in the qualifying social entrepreneurship fund portfolio for the benefit of both the qualifying social entrepreneurship fund concerned and its investors.

2 The strategies referred to in paragraph 1 shall determine the measures to be adopted and procedures to be followed and shall include at least the following steps:

a monitoring of relevant corporate actions;

b ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the qualifying social entrepreneurship fund;

c prevention and management of any conflicts of interest arising from the exercise of those voting rights.

3 Managers of qualifying social entrepreneurship funds shall upon request, provide investors with a summary description of the strategies referred to in paragraphs 1 and 2 and the details of the actions taken pursuant to those strategies.

Article 6

Disclosure of conflicts of interest

1 Managers of qualifying social entrepreneurship funds shall provide the information referred to in Article 9(4) of Regulation (EU) No 346/2013 in a durable medium as referred to in point (m) of Article 2(1) of Directive 2009/65/EC of the European Parliament and of the Council[(3)] and keep that information up to date.

2 Managers of qualifying social entrepreneurship funds may provide the information referred to in paragraph 1 by means of a website, without addressing that information personally to the investor, provided that all of the following conditions are satisfied:

a the investors have been notified of the address of the website and of the place on the website where the information can be accessed;

b the investors have consented to the provision of that information by means of a website;

c the information is continuously accessible on the website for such period of time as the investors may reasonably need to access it.

Article 7

Procedures to measure positive social impact

1 Managers of qualifying social entrepreneurship funds shall ensure that the procedures referred to in Article 10(1) of Regulation (EU) No 346/2013 contain at least the following:

a an evaluation of resources used by the qualifying portfolio undertakings;

b an evaluation of products and services made available by the qualifying portfolio undertakings;