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## STATUTORY INSTRUMENTS

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# 2019 No. 333

## The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019

### PART 2

#### Amendment of the European Venture Capital Funds Regulation

##### Subject matter, scope and definitions

- 3.—(1) In Article 1—
- (a) in the first subparagraph—
    - (i) for “EuVECA” substitute “ RVECA ”;
    - (ii) for “Union, thereby contributing to the smooth functioning of the internal market” substitute “ United Kingdom ”;
  - (b) in the second subparagraph—
    - (i) omit “uniform”;
    - (ii) for “across the Union”, in both places it occurs, substitute “ in the United Kingdom ”.
- (2) In Article 2—
- (a) in paragraph 1—
    - (i) in point (a), for “point (b) of Article 3(2) of Directive 2011/61/EU” substitute “ regulation 9(1)(a) of the AIFM Regulations <sup>M1</sup> ”;
    - (ii) in point (b), for “Union” substitute “ United Kingdom ”;
    - (iii) in point (c), for “competent authorities of their home Member State in accordance with point (a) of Article 3(3) of Directive 2011/61/EU” substitute “ FCA in accordance with regulation 10 of the AIFM Regulations ”;
  - (b) in paragraph 2—
    - (i) for “to 19” substitute “ , 17, 18 ”;
    - (ii) omit “, the second subparagraph of Article 20(3), and Articles”;
    - (iii) for “authorised under Article 6 of Directive 2011/61/EU” substitute “ who have permission under Part 4A of FSMA <sup>M2</sup> to carry on the regulated activity specified by article 51ZC of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 <sup>M3</sup> ”;
    - (iv) for “that manage” substitute “ and who manage ”
    - (v) for “EuVECA” substitute “ RVECA ”;
    - (vi) for “Union” substitute “ United Kingdom ”;
  - (c) in paragraph 3, for the words from “undertakings” to the end substitute “ UK UCITS (which has the meaning given in section 237 of FSMA <sup>M4</sup>) ”.

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**Changes to legislation:** *The Venture Capital Funds (Amendment) (EU Exit) Regulations 2019, Section 3 is up to date with all changes known to be in force on or before 23 December 2023. 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*

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(3) In Article 3—

- (a) in point (a) (definition of ‘collective investment undertaking’), for “point (a) of Article 4(1) of Directive 2011/61/EU” substitute “ regulation 3 of the AIFM Regulations ”;
- (b) after point (a), insert—
- “(aa) “UK insurance undertaking” means an undertaking which—
- (i) has its registered office, or (if it has no registered office) its head office, in the United Kingdom;
  - (ii) has, or is treated as having, permission under Part 4A of FSMA to carry on one or more regulated activities; and
  - (iii) would have required authorisation in accordance with Article 14 of the Solvency 2 Directive <sup>M5</sup>, were the United Kingdom a Member State;”;
- (c) in point (b) (definition of ‘qualifying venture capital fund’)—
- (i) in the opening words, before “means” insert “ , unless the contrary intention appears, ”;
  - (ii) in point (iii), for “territory of a Member State” substitute “ United Kingdom ”;
- (d) for point (d) (definition of ‘qualifying portfolio undertaking’) substitute—
- “(d) ‘qualifying portfolio undertaking’ means an undertaking that—
- (i) at the time of the first investment by the qualifying venture capital fund in that undertaking complies with one of the following conditions:
    - the undertaking is not admitted to trading on a UK regulated market, an EU regulated market, a UK multilateral trading facility or an EU multilateral trading facility (as defined in points (13A), (13B), (14A) and (14B) of Article 2(1) of the Markets in Financial Instruments Regulation 2014) and employs up to 499 persons,
    - the undertaking is a small and medium-sized enterprise (as defined in Article 4(1)(13) of Directive 2014/65/EU), which is listed on an EU SME growth market (which has the meaning given to an “SME growth market” in Article 4(1)(12) of Directive 2014/65/EU) or a UK SME growth market (which means a MTF that is registered as an SME growth market in accordance with Part 5.10 of the Market Conduct sourcebook);
  - (ii) is not itself a collective investment undertaking;
  - (iii) is not one or more of the following—
    - a credit institution as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms,
    - an investment firm as defined in Article 2(1A) of the Markets in Financial Instruments Regulation 2014,
    - a UK insurance undertaking,
    - an EU insurance undertaking, which has the meaning given to ‘insurance undertaking’ in Article 13(1) of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II),
    - a financial holding-company as defined in Article 4(1)(20) of Regulation 575/2013/EU of the European Parliament and of the Council of 26 June

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- 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, or
- a mixed-activity holding company as defined in Article 4(1)(22) of Regulation 575/2013/EU;
- (iv) is established within the United Kingdom, the territory of a Member State, or in a third country provided that the third country—
- is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force on Anti-Money Laundering and Terrorist Financing,
  - has signed an agreement with the United Kingdom to ensure that the third country fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;”;
- (e) in point (e) (definition of ‘qualifying investments’)—
- (i) in point (iv), for “in qualifying venture capital funds” substitute—
    - “in—
    - (aa) qualifying venture capital funds,
    - (bb) European qualifying venture capital funds (which has the meaning given to ‘qualifying venture capital funds’ in Article 3(3)(b) of Regulation (EU) 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds as it applies in the European Union, as amended from time to time),
    - (cc) a combination of the funds specified in point (aa) and (bb)”;
  - (ii) after point (iv) insert—
    - “(v) an instrument falling within Article 3(e)(iv) of Regulation (EU) 345/2013 as it applies in the European Union, as amended from time to time;”;
- (f) in point (i) (definition of ‘marketing’), for “Union” substitute “ United Kingdom ”;
- (g) omit points (k) to (n) (definitions of ‘home Member State’, ‘host Member State’, ‘competent authority’ and ‘competent authority of the host Member State’);
- (h) after point (j) insert—
- “(o) ‘the FCA’ means the Financial Conduct Authority;
  - (p) ‘FSMA’ means the Financial Services and Markets Act 2000;
  - (q) ‘the AIFM Regulations’ means the Alternative Investment Fund Managers Regulations 2013;
  - (r) ‘the Markets in Financial Instruments Regulation 2014’ means Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, as that Regulation forms part of domestic law.

Any reference in this Regulation to a sourcebook is to a sourcebook in the Handbook of Rules and Guidance published by the FCA containing rules made and guidance issued by the FCA under FSMA as the sourcebook has effect on [F<sup>1</sup>IP completion day].”

**F1** Words in [reg. 3\(3\)\(h\)](#) substituted (30.12.2020) by [The Financial Services and Economic and Monetary Policy \(Consequential Amendments\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1301\)](#), regs. 1, 3, [Sch. para. 20\(a\)](#)

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#### **Commencement Information**

- I1** Reg. 3 in force at 31.12.2020 on IP completion day (in accordance with [2020 c. 1, Sch. 5 para. 1\(1\)](#)), see [reg. 1\(1\)](#)

#### **Marginal Citations**

- M1** [S.I. 2013/1773](#).
- M2** Part 4A of the [Financial Services and Markets Act 2000 \(c.8\)](#) was substituted for Part 4 by s.11(2) of the [Financial Services Act 2012 \(c.21\)](#).
- M3** [S.I. 2001/544](#). Article 51ZC was substituted, with Articles 51ZA to 51ZG, for Article 51 by [S.I. 2013/1773](#).
- M4** [2000 c.8](#). The definition of “UK UCITS” was inserted by [S.I. 2011/1613](#).
- M5** OJ L335, 17.12.2009, p.1.

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**Changes and effects yet to be applied to :**

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)