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The amended EuVECA and EuSEF Regulations

Regulation (EU) 2017/1991 amending regulations (EU) No 345/2013 on European Venture Capital Funds (EuVECAs) and (EU) No 346/2013 on European Social Entrepreneurship Funds (EuSEFs) (together, the "Regulations") has been published today in the Official Journal of the European Union and will be applicable as of 1 March 2018.

The amendments to the Regulations are a result of the European Commission's review process launched in 2016 which identified a lack of success of the two Regulations, especially that of the EuSEF regulation. Three main obstacles to a widespread use of the labels were identified during such review process: (i) the existence of certain limitations imposed on managers (both in term of size and dual requirements imposed under the regulations and the European alternative investment fund managers' directive (AIFMD)), (ii) the scope of eligible assets and (iii) the amount of costs/regulatory fees. The amending regulation aims at eliminating such obstacles, or at least at reducing their impact. This is achieved through the following **main measures**:

- **Fully authorised alternative investment fund managers (AIFMs) will be permitted to manage EuVECAs and EuSEFs as of day one.** The previous wording of the Regulations was somewhat unclear and seemed to only permit above-threshold AIFMs to act for EuVECAs and EuSEFs if they had become authorised at some point in time after initial on-boarding of the funds. This clarification now eliminates all uncertainty and clearly provides for the possibility of having fully authorised AIFMs manage EuVECAs and EuSEFs from the outset.

- **The definition of "qualifying portfolio undertaking" for EuVECAs has been broadened.** Previously, such definition only covered so-called small and medium-sized enterprises (SMEs), i.e. unlisted companies with fewer than 250 employees, an annual turnover of less than EUR 50 million and an annual balance sheet of less than EUR 43 million. The definition has now been expanded to cover all unlisted companies with up to 499 employees or entities listed on an SME growth market. Furthermore, these criteria need only be met at the time of initial funding, further facilitating follow-on investments.

- **The initial capital and own funds requirements has been harmonised.** In the past, each national competent authority had discretion to assess the appropriate level of initial capital and own funds due to an intentional lack of explicit legislative guidance. In practice, this led to a significant amount of regulatory arbitrage with certain regulators applying the rather strict requirements of the AIFMD and others setting fixed amounts, which in certain cases were significantly less than those resulting from the first mentioned approach. The initial capital is now set at EUR 50,000 and the own funds must now never be less than one eighth of the preceding year's fixed overhead costs of the manager. Additional amounts will be required in case the assets under management exceed EUR 250 million.

- Finally, **the roles of and interaction between the competent authorities of the fund and the manager** have been clarified in order to avoid uncertainty and redundancies.

It remains to be seen whether the aforementioned amendments will **increase market acceptance of the EuVECA and EuSEF labels**, especially as the most obvious measure for increasing their success would have been granting tax incentives for the use of such labels (as already stated by numerous stakeholders during the consultation process performed prior to adopting the initial Regulations).

Nonetheless, it should be noted that the EuVECA and EuSEF labels do grant significant practical advantages not accessible to other alternative investment funds managed by authorised AIFMs, the most noteworthy being the absence of a legal requirement to appoint a depositary and a simplified marketing process. The latter applies both in terms of eligible investors (as marketing to other sophisticated investors not qualifying as "professional investors" within the meaning of the AIFMD is permitted) and the fact that there is no waiting period before undertaking marketing activities once the marketing notification has been submitted to the regulatory authority (whereas a marketing notification submitted in accordance with the AIFMD can entail a waiting period of up to 20 business days).

Moreover, under Solvency II an investment in EuVECAs and EuSEFs will generally be more attractive than investments in most other types of alternative investment funds.