

ENFORCEMENT (SOCIAL ENTREPRENEURSHIP FUNDS, VENTURE CAPITAL FUNDS AND MONEY MARKET FUNDS) INSTRUMENT 2018

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of: the following powers and related provisions in:
- (1) the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 139A (Power of the FCA to give guidance);
 - (b) section 395 (The Authority’s procedures); and
 - (2) the Alternative Investment Fund Managers Regulations 2013:
 - (a) section 70 (Warning notices, Decision Notices and Supervisory Notices).

Commencement

- B. This instrument comes into force on 27 July 2018.

Amendments to the Handbook

- C. The Glossary is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.

Amendments to material outside the Handbook

- E. The Enforcement Guide (EG) is amended in accordance with Annex C to this instrument.

Citation

- F. This instrument may be cited as the Enforcement (Social Entrepreneurship Funds, Venture Capital Funds and Money Market Funds) Instrument 2018.

By order of the Board
26 July 2018

Annex A

Amendments to the Glossary of definitions

In this Annex underlining indicates new text.

Amend the following definitions as shown.

<i>authorisation order</i>	<p>an order made by the <i>FCA</i>:</p> <ul style="list-style-type: none"> (a) in relation to an <i>AUT</i> under section 243 of the <i>Act</i> (Authorisation orders); (b) in relation to an <i>ICVC</i> under regulation 14 of the <i>OEIC Regulations</i> (Authorisation); (c) in relation to an <i>ACS</i> under section 261D of the <i>Act</i> (Authorisation orders); <p>as a result of which the <i>AUT</i> or <i>ACS</i> becomes authorised or the body becomes incorporated as an <i>ICVC</i> under regulation 3 of the <i>OEIC Regulations</i> (Open-ended investment company); <u>or an <i>AUT</i>, <i>ACS</i> or <i>ICVC</i> becomes declared a money market fund.</u></p>
<i>EuVECA regulation</i>	<p>Regulation (EU) No 345/2013 of the European Parliament and the Council of 17 April 2013 on European venture capital funds <u>as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.</u></p>
<i>EuSEF regulation</i>	<p>Regulation (EU) No 346/2013 of the European Parliament and the Council of 17 April 2013 on European social entrepreneurship funds <u>as amended by Regulation (EU) No 2017/1991 of the European Parliament and the Council of 25 October 2017 amending Regulation (EU) No 345/2013 on European venture capital funds and Regulation (EU) No 346/2013 on European social entrepreneurship funds.</u></p>

Annex B

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text.

2 Statutory notices and the allocation of decision making

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2.5 Provision for certain categories of decision

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2.5.15G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a scheme to be an *AUT*, *ACS* or *ICVC* or an *AUT*, *ACS* or *ICVC* to be a money market fund will be taken by the *RDC* only if the application is by an *authorised fund manager* who is not the operator of an existing *AUT*, *ACS* or *ICVC*. Otherwise, the decision to give the *warning notice* or *decision notice* will be taken by *FCA* staff under *executive procedures*.

...

2 Annex 1 Warning notices and decision notices under the Act and certain other enactments

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Section of the Act	Description	Handbook reference	Decision maker
...
245(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>unit trust scheme</i> to be an <i>AUT</i> <u>or an <i>AUT</i> to be a money market fund</u>	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G
...
261G(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i>	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i>

	declaring a <i>scheme</i> to be an <i>ACS</i> or an <i>ACS</i> to be a <u>money market fund</u>		2.5.15G
...

...

OEIC Regulations reference	Description	Handbook reference	Decision maker
Regulation 16(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i> or an <i>ICVC</i> to be a <u>money market fund</u>	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> See <i>DEPP</i> 2.5.15G
...

...

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...
Regulation 13(2)(a), article 14b of the <u><i>EuVECA regulation</i></u> and article 15b of the <u><i>EuSEF regulation</i></u>	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures</i> where no representations are made in response to a <i>warning notice</i> otherwise by the <i>RDC</i>
...
Regulation 23C(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a <i>UK ELTIF</i>		<i>RDC</i>

<u>Regulation 23E(1)</u>	<u>where the FCA proposes to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u>		<u><i>Executive procedures</i></u>
<u>Regulation 23E(2)(a)</u>	<u>where the FCA decides to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u>		<u><i>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</i></u>
<u>Regulation 23F(1)</u>	<u>where the FCA proposes to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u>		<u><i>RDC</i></u>
<u>Regulation 23F(2)(a)</u>	<u>where the FCA decides to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i></u>		<u><i>RDC</i></u>
<u>Regulation 23H(1)</u>	<u>where the FCA proposes to refuse an application for authorisation as a <i>money market fund</i></u>		<u><i>Executive procedures</i></u>
<u>Regulation 23H(2)(a)</u>	<u>where the FCA decides to refuse an application for authorisation as a <i>money market fund</i></u>		<u><i>Executive procedures where no representations are made in response to a warning notice otherwise</i></u>

			<u>by the RDC</u>
<u>Regulation 23I(1)</u>	<u>where the FCA proposes to revoke the authorisation of a money market fund</u>		<u>RDC</u>
<u>Regulation 23I(2)(a)</u>	<u>where the FCA decides to revoke the authorisation of a money market fund</u>		<u>RDC</u>
...			

Annex C

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

19 Non-FSMA powers

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19.27 Alternative Investment Fund Managers Regulations 2013

19.27.1 The *AIFMD UK regulation* transposes *AIFMD* and makes the necessary changes to *UK* legislation in relation to the *EuSEF regulation*, the *EuVECA regulation*, ~~and the *ELTIF regulation*~~ and the *Money Market Funds regulation*. It provides new and updated powers in relation to both existing and new managers of *AIFs*, whether authorised or registered.

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Information gathering and investigation powers

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19.27.4 The new powers under the *AIFMD UK regulation* include powers of direction and the power to revoke the registration of *small registered UK AIFMs*, (including a *EuSEF manager* or a *EuVECA manager* and, in some circumstances, EEA managers of a *qualifying social entrepreneurship fund* or a *qualifying venture capital fund*), the registration of *qualifying social entrepreneurship funds* or *qualifying venture capital funds* or the authorisation of a money market fund, respectively.

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