Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

UPDATE REPORT – APRIL 2009

Introduction

The first report of the Guidelines Monitoring Group (the 'Group') was issued in January 2009 and provided a summary of the private equity industry's conformity with the Walker Guidelines (the 'Guidelines). The findings of the Group's first report were that a substantial majority of the portfolio companies reviewed made good or acceptable disclosures with only a limited number of exceptions.

This update report is not intended to be a full review of compliance and instead is limited to:

- A review of conformity with the Guidelines in respect of:
    - disclosures required by private equity firms
    - the availability of:
        - audited reports and accounts
        - mid-year updates giving a brief account of major developments
- The Group's recommendations for any changes to the Guidelines to be implemented by the British Venture Capital Association (the 'BVCA').

There continues to be a high level of commitment to the guidelines from the industry and this is demonstrated by the almost complete conformity in respect of the disclosure requirements that were reviewed in the preparation of this update report.

The Group's next full annual review of conformity with the Guidelines will be published at the end of 2009.

The Guidelines

In November 2007 Sir David Walker published Guidelines for Disclosure and Transparency in Private Equity (the "Guidelines").

The Guidelines require additional disclosure and communication by private equity firms and their portfolio companies, where one or more of their portfolio companies meet the following criteria:

- more than 1,000 UK employees and
- more than 50% of their revenues in the UK and
- had either an enterprise value of more than £500 million when acquired by one or more private equity firms or, in the case of a public to private transaction, had a market capitalisation together with premium for acquisition of control of more than £300 million.

The Guidelines are voluntary and operate on a comply or explain basis.

Guidelines Monitoring Group

The Group was established in March 2008 to monitor conformity with the Guidelines and make recommendations to the BVCA for changes to the Guidelines if required. A full list of the members of the Group can be found on the Guidelines Monitoring Groups website www.walker-gmg.co.uk. The website also provides a full list of the private equity firms and portfolio companies that are covered by the Guidelines.

Communication by a private equity firm

Requirement

The Guidelines require that a private equity firm should publish an annual review accessible on its website, or ensure regular updating of its website to communicate:

- a description of the way in which the FSA-authorised entity fits into the firm of which it is a part with an indication of the firm's history and investment approach, including investment holding periods, where possible illustrated with case studies
- a commitment to conform to the guidelines on a comply or explain basis and to promote conformity on the part of the portfolio companies owned by its fund or funds
- an indication of the leadership of the UK element of the firm, identifying the most senior members of the management or advisory team and confirmation that arrangements are in place to deal appropriately with conflicts of interest, in particular where it has a corporate advisory capability alongside its fiduciary responsibility for management of the fund or funds
- a description of UK portfolio companies in the private equity firm's portfolio
- a categorisation of the limited partners in the fund or funds that invest or have a designated capability to invest in companies that would be UK portfolio companies for the purposes of these guidelines, indicating separately a geographic breakdown between UK and overseas sources and a breakdown by type of investor, typically including pension funds, insurance companies, corporate investors, funds of funds, banks, government agencies, endowments of academic and other institutions, private individuals, and others.

GUIDELINES MONITORING GROUP

Findings

The Group's report issued in January 2009 identified that at the time the review was conducted, approximately half of the private equity firms conforming with the Guidelines fully met their disclosure requirements and most of the remainder made good or acceptable disclosures, with only a minimum number of exceptions at that time. Where exceptions were identified, the individual firms concerned were notified of the action required to address them.

The Group have subsequently re-reviewed disclosures made and have confirmed that the private equity firms covered by the guidelines have in all cases now addressed the exceptions identified in the January 2009 report.

All 32 private equity firms covered by the guidelines, both required and voluntary, are now therefore in full conformity with the Guidelines for disclosures required in respect of the firms themselves.

The scope of this review covered the disclosure requirements for the private equity firms themselves. The review of conformity for portfolio company disclosures will be covered in the Group's full annual report which will be issued at the end of 2009.

Form and timing of public reporting by a portfolio company

Requirement

a. The audited report and accounts should be readily accessible on the company website

b. The report and accounts should be made available no more than 6 months after the company year-end

c. A summary mid-year update, giving a brief account of major developments in the company (but not requiring updated financial statements) to be placed on the website no more than 3 months after mid-year

Findings

Other than the companies identified below, all portfolio companies that are within the Guidelines, both on a required and voluntary basis, have made available on their websites:

- audited reports and accounts
- summary mid-year updates

NCP Services was demerged from National Car Parks, another required Walker portfolio company. As a consequence, NCP Services was identified as a separate required Walker portfolio company late in last year's process and therefore will be conforming from December 2008 onwards, as highlighted in the January 2009 GMG report (page 22). Equiniti have also committed to meeting the requirements from December 2008 as highlighted in the January report. Accantia and 2e2 have made their accounts available and have committed to providing mid-year updates from December 2008. Travelodge have made their accounts available and have in principle committed to providing mid-year updates from December 2008.

Recommendations for changes to the Guidelines

The Group recommends that the definition of 'portfolio company' used in the Guidelines to determine portfolio companies that are required to conform should be amended as follows:

Current definition:

A UK company

a) acquired by one or more private equity firms in a public to private transaction where the market capitalisation together with the premium for acquisition of control was in excess of £300 million, more than 50% of revenues were generated in the UK **and** UK employees totalled in excess of 1,000 full-time equivalents

b) acquired by one or more private equity firms in a secondary or other non-market transaction where enterprise value at the time of the transaction is in excess of £500 million, more than 50% of revenues were generated in the UK **and** UK employees totalled in excess of 1,000 full-time equivalents.

Proposed change to the definition:

A UK company

a) acquired by one or more private equity firms in a public to private transaction where the market capitalisation together with the premium for acquisition of control was in excess of £300 million and more than 50% of revenues were generated in the UK **or** UK employees totalled in excess of 1,000 full-time equivalents

b) acquired by one or more private equity firms in a secondary or other non-market transaction where enterprise value at the time of the transaction is in excess of £500 million and more than 50% of revenues were generated in the UK **or** UK employees totalled in excess of 1,000 full-time equivalents.

As a consequence of this change in the definition, it is estimated that the number of portfolio companies required to conform with the Guidelines will be increased from 27 to approximately 50. Of the additional 23 portfolio companies that will be required to conform as a consequence of the change in the definition, approximately 14 currently conform on a voluntary basis. It is proposed that this change should be adopted with immediate effect and portfolio companies falling within the revised definition will be included within the 2009 GMG review being conducted later this year.

In addition to this change, the Group are considering whether the threshold of £500m used in the current definition of a 'portfolio company' should be lowered. As recommended in the Guidelines, this process is being undertaken via consultation with the private equity industry. The consultation is currently in progress and the Group are awaiting the issue of the draft EU Directive on Alternative Investment Fund Managers. It is expected that the consultation will be completed by summer 2009. Following completion of the consultation, the Group will announce their recommendations which, if a change is required, would apply for 2010 onwards.

For further information contact the Guidelines Monitoring Group
3 Clements Inn, London, WC2A 2AZ **T:** 020 7025 2950 **F:** 020 7025 2951 **walker-gmg.co.uk**