

# Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

**FOURTH REPORT** – DECEMBER 2011



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# EXECUTIVE SUMMARY

# 1

## 1.1 Introduction

This is the fourth annual report of the Guidelines Monitoring Group (the “Group”) and provides a summary of the private equity industry’s conformity with the Guidelines for Disclosure and Transparency in Private Equity (the “Guidelines”) following their introduction in November 2007.

The Group was established in March 2008 to monitor conformity with the Guidelines and make recommendations to the British Private Equity and Venture Capital Association (the “BVCA”) for changes to the Guidelines if required. The Group has oversight for and aims to guide and assist the industry in improving transparency and disclosure.

## 1.2 The Guidelines

In February 2007, the BVCA asked Sir David Walker to undertake an independent review of the adequacy of disclosure and transparency in private equity, with a view to recommending a set of guidelines for conformity by the industry on a voluntary basis. This review resulted in the publication of the Guidelines (a summary is attached as appendix 3) in November 2007.

The Guidelines require additional disclosure and communication by private equity firms and their portfolio companies where the private equity firms and portfolio companies meet the Guidelines criteria.

In addition to the enhanced disclosure requirements, the Guidelines also include requirements on data being provided by private equity firms and portfolio companies to the BVCA, adoption of certain valuation guidelines, reporting to limited partners and the responsibility to ensure timely and effective communication during periods of significant strategic change.

In April 2010, following a consultation process with private equity firms, the Group announced that the criteria for defining a portfolio company should be expanded. The expanded definition applies to UK companies acquired by one or more private equity firms where the enterprise value at acquisition is greater than £350 million (reduced from £500 million) or where the market capitalisation together with the premium for acquisition of control was in excess of £210 million (reduced from £300 million) in a public to private transaction, and more than 50% of revenues were generated in the UK or UK employees totalled more than 1,000 full-time equivalents. These changes were effective for accounting year ends of 31 December 2010 and onwards and have been applied for this, the fourth GMG report.

In October 2010, following a consultation process with private equity firms, the Group published guidance on the definition of control, which forms part of the definition of a private equity firm for the purpose of the Guidelines (see appendix 4). The decision to issue guidance was due to an increased level of dilution of ownership in private equity owned companies during the year. The BVCA will discuss specific cases with private equity firms and feedback findings to the Group for its consideration.

### 1.3 Guidelines Monitoring Group

The Group is chaired by Sir Michael Rake, Chairman of BT Group plc. He is supported by two other independent members: Alan Thomson, Chairman of Hays plc and Baroness Drake, previous President of the TUC. Representing the private equity industry are: Robert Easton, Managing Director at The Carlyle Group, and Gerry Murphy, Senior Managing Director at Blackstone Group.

### 1.4 Private equity firms and portfolio companies covered by the Guidelines

Details of the private equity firms and portfolio companies that have agreed to comply with the Guidelines are attached as appendices 1 and 2 to this report.

#### Private equity firms

Forty-three private equity firms are covered by the Guidelines this year, an increase of eight from the prior year. Within this population, one "private equity" firm has not been able to comply with the guidelines. Dubai International Capital have noted that whilst they are committed to transparency in disclosure in portfolio companies they are unable to accommodate the additional specific disclosures as required by the Guidelines.

#### Portfolio companies

A total of seventy-eight portfolio companies are covered by the Guidelines this year. Of this number, sixty-nine are included as required companies, and nine as voluntary (see appendix 2). This compares to a total of fifty-five portfolio companies that were covered by the Guidelines last year, forty-three of which were included as required companies and twelve included as voluntary.

Of the seventy-eight companies, Park Resorts, a GI Partners portfolio company, have been unable to comply with the Guidelines this year. GI Partners have expressed a commitment that they will comply with the Guidelines in future years.

The changes in the number of portfolio companies covered by the Guidelines this year is a consequence of transactions that have taken place during the year and meeting the amendments to the Guidelines thresholds, agreed in April 2010.

### 1.5 Review of conformity

As last year, PricewaterhouseCoopers LLP ("PwC") was appointed to assist the Group in carrying out this year's review of the disclosures made by a sample of portfolio companies with year ends up to and including 30 April 2011. This report summarises the findings of that exercise along with the Group's own review of the other requirements of the Guidelines.

#### Overview

PwC reviewed a total sample of disclosures of thirty portfolio companies. Of these, fourteen portfolio companies had not been part of the Walker population in previous years and met the revised threshold criteria as published in April 2010. Thirteen of the companies selected had been previously reviewed and assessed as compliant and three companies previously assessed as below average were also selected for review this year.

Throughout the review process the Group has worked closely with both private equity firms and portfolio companies. There has been an increased amount of contact with those within the Walker population for the first time this year to ensure that they meet the required standards as laid out in the Guidelines. The Group will continue to provide feedback to firms and portfolio companies to raise the levels of disclosure and adherence with the Guidelines so that this becomes industry standard.

The findings of this year's review identified a higher level of overall compliance with the Guidelines than in previous years. These results are particularly encouraging as the Group has continued to raise the required standard of overall disclosure to achieve compliance with the Guidelines. These improvements also include a significant change in the thresholds and the number of new entrants in both the total population of Walker compliant companies and the composition of the sample selected for testing. This demonstrates the high level of commitment to the Guidelines from the private equity industry. The Group continues to recognise that further improvements are necessary and can be made, in particular in the disclosures of new entrants in to the Walker population.

Whilst there has been an improvement in the level of overall compliance, the quality of disclosure varied significantly. Those portfolio companies tested that met the thresholds in previous years have all been assessed as compliant again this year and had a good or acceptable level of compliance. These companies also report at a level equivalent to, or in advance of, FTSE 350 companies.

Of the three portfolio companies previously assessed as being below average and remaining within the Walker reporting sample, two of the companies have improved their reporting to meet the required standards. However, Doncasters, a Dubai International Capital portfolio company have been unable to meet the required standards of disclosure.

Those companies that are within the population for the first time this year have all met at least the basic requirements in order to comply with the Guidelines. However, there is a clear difference in that the level of reporting of this group is not as comparable to that of the FTSE 350. The GMG will continue to work with these new entrants and provide advice and guidance to assist them in further improving the disclosure of those companies. In March 2011 the Group commissioned an update to its' guide published by PwC entitled "Improving transparency and disclosure – good practice reporting by Portfolio Companies". The Group intend to commission and publish an update to this report in March 2012.

As in previous years the Group continues to benchmark the level of reporting by private equity owned companies against listed companies. This compares reporting by private equity owned companies and FTSE 350 companies. The research concludes that private equity owned companies compare well to the FTSE 350, although, as mentioned, this viewpoint differs when comparing previous reporters to new reporters under the Guidelines. In general although portfolio companies are able to reach a similar level of compliance against the requirements, the ability to provide clear linkage of the different areas of the disclosures, particular in relation to strategy, risks and KPIs, falls below the standard seen in FTSE 350 companies. This may reflect a higher desire in FTSE 350 companies to be able to articulate their business to external investors and analysts, whereas private businesses may see less value in this and the information is provided only to comply with the requirements. The key findings include:

- Disclosure of principal risks and uncertainties is an area of strong compliance by both sets of populations, however for private equity portfolio companies these focus largely on the financial risks for the business.
- Strategy is less well explained for Walker companies, including strategic priorities, and this impacts the ability of the disclosures to show a strong linkage between strategy and risk management.
- Although still a relatively weak area, there is better linkage of portfolio company's corporate, social responsibility ("CSR") agenda and environmental policy with their overall strategy. Often this is embedded within the same document as opposed to being included in a separate CSR document which may lead to this better linkage.

As in previous years, the Group will provide individual letters to all firms that had portfolio companies reviewed. The letter will set out the findings of this year's review and make recommendations where improvements can be made.

The Group recognises the effort made by the private equity industry in implementing the Guidelines. Whilst significant progress has been made since the introduction of the Guidelines in November 2007, there continues to be room for improvement in a number of areas.

### **Portfolio companies**

PwC reviewed a sample of thirty portfolio companies out of a total population of seventy-eight portfolio companies. The population selected for review contains fourteen companies not previously reviewed, thirteen companies reviewed in previous years and assessed as compliant, and three companies reviewed in 2010 and assessed as below average. The Group aims to ensure that going forward all portfolio companies are reviewed at least once every three years, and will continue with its policy of re-reviewing companies whose reporting is regarded as below average.

In assessing conformity, the requirements of the Guidelines can be separated into three areas:

#### ***Guidelines specific:***

The Guidelines include specific requirements to provide information about the private equity firm, the composition of the board and to include a financial review. These requirements were met in the large majority of cases, although some of the portfolio companies that were new to the Walker population could improve disclosures in this area.

#### ***Business Review (required by UK Companies Act):***

The disclosure requirements relating to the financial position, financial risks and principal risks and uncertainties were generally met, however, there is improvement required in the disclosure of non-financial key performance indicators, an issue that is also widely observed outside the Walker population and not solely restricted to portfolio companies reviewed for the first time.

#### ***Enhanced Business Review:***

The standard of disclosure in respect of non-financial KPI's, social and community issues, environmental matters and essential contractual arrangements was mixed. Whilst some portfolio companies provided detailed disclosure in these areas, others fell short of the requirements. There continues to be improvement amongst previously reviewed portfolio companies, but those new in the Walker population this year still require some improvements.

### **Overall assessment of portfolio company disclosures**

Initially, ten of the companies reviewed, consisting of eight new companies and two of those being re-reviewed, were assessed by the Group as requiring additional disclosure in order to achieve full compliance with the Guidelines. After discussion between the Group and the private equity owners of the portfolio companies concerned, nine of the companies addressed the exceptions identified and met the requirements. As such, the Group considers that twenty nine of the thirty companies reviewed by the Group this year, have met the Guidelines' enhanced disclosure requirements. The only portfolio company that has failed to meet the guidelines other than already noted has been Doncasters, a Dubai International Capital portfolio company.

The Guidelines require that conformity with each of the requirements is on a 'comply or explain' basis. The Guidelines state:

"Where an explanation is given for non compliance, this should be posted alongside other related relevant disclosures called for under the Guidelines on the website of the private equity firm or portfolio company".

Within the population one private equity firm has adopted an explain approach rather than comply with the Guidelines.

Park Holidays, a GI Partners portfolio company, met the revised criteria for the December 2010 year end. Management and GI Partners have been unable to comply with the Guidelines this year but have made a commitment to comply in future years.

As the portfolio company and private equity firm have made a commitment to adhere to the Guidelines in the future, the Group has accepted the explanation for this year.

Dubai International Capital has not complied with the Guidelines.

### **Private equity firm disclosures**

Given the findings in last year's report the Group again selected a sample of ten private equity firms covered by the Guidelines to review for conformity with each of the individual requirements. All firms selected complied with the requirement, this was consistent with last year.

### **Other requirements**

The Group's review of conformity with the other recommendations of the Guidelines, including the provision of data to the industry association and communication during a period of significant strategic change, did not identify any exceptions.

## **1.6 Performance of portfolio companies**

The Guidelines recommend that the BVCA should commission research into the trading performance of companies and attribution analysis in respect of exits and publish the findings.

Ernst & Young were commissioned again this year to undertake the research. As at the date of publication of this report, Ernst & Young is still compiling the results of the information on the performance of portfolio companies. It is expected that this research will be completed in quarter one 2012 and will be published on the BVCA website when available; Prior years' reports published by Ernst & Young can be found at:

**[www.bvca.co.uk/Research](http://www.bvca.co.uk/Research)**

## **1.7 Future activities of the Group**

When the Guidelines were introduced it was recognised that to ensure they remain appropriate, they would need to be capable of evolving over time. The Group is currently working on the following:

- Considering an addition to the Guidelines which would require portfolio companies to disclose that the company has adopted the Guidelines;
- Conducting a consultation process with private equity firms about a possible amendment to the definition of a private equity firm for the purpose of the Guidelines; and
- Continuing to review the enterprise value thresholds in accordance with developing European legislation and regulation.

## 2

## OVERVIEW OF THE GUIDELINES

In February 2007 the BVCA asked Sir David Walker to undertake an independent review of the adequacy of disclosure and transparency in private equity with a view to recommending a set of guidelines for conformity by the industry on a voluntary basis. This review culminated in the publication of the Guidelines for Disclosure and Transparency in Private Equity in November 2007.

The requirements and recommendations of the Guidelines are reproduced in appendices 3 and 4. Set out below is a summary of those requirements and recommendations.

### 2.1 Definition of private equity firms and portfolio companies covered by the Guidelines

The Guidelines apply exclusively to private equity firms and their UK companies as defined below:

A private equity firm is a firm authorised by the FSA that is managing or advising funds that either own or control one or more UK companies or have a designated capability to engage in such investment activity in the future where the company or companies are covered by the enhanced reporting guidelines for companies.

A portfolio company is 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 £210 million (reduced from £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; or
- 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 was in excess of £350 million (reduced from £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.

The above definition of a portfolio company reflects the changes made to the criteria in April 2010 and has been effective for accounting year ends of 31 December 2010 and onwards.

### 2.2 Summary of the content and timing of disclosure required by portfolio companies

A portfolio company should publish its annual report and accounts on its website within six months of the year-end and:

- The report should identify the private equity fund or funds that own the company and provide details of the composition of the board;
- The financial review should cover risk management objectives and policies in the light of the principal financial risks and uncertainties facing the company with links to the appropriate detail in the footnotes to the accounts; and

- The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including the Enhanced Business Review requirements that are ordinarily applicable only to quoted companies.

A summary of the detailed requirements for portfolio company disclosure can be found at Appendix 3.

## **2.3 Disclosure and communication required by private equity firms**

### **Disclosures**

A private equity firm should publish either in the form of an annual review or through regular updating of its website:

- A description of the way the FSA-authorized entity fits into the firm as a whole with an indication of its investment approach including investment holding periods along with an indication of the leadership of the firm and confirmation that it has appropriate arrangements to deal with conflicts of interest; and
- A commitment to conform to the Guidelines, a description of the companies in the private equity firm's portfolio and a categorisation of the limited partners in the fund or funds including a geographic categorisation and a breakdown by type of investor.

Additionally, private equity firms should, in their reporting to limited partners, follow established guidelines, such as those published by the European Private Equity and Venture Capital Association ('EVCA'), follow established guidelines in the valuation of their assets, and should provide data to the BVCA in support of its enhanced role in data collection, processing and analysis.

Private equity firms should also commit to ensure timely and effective communication with employees, either directly or through their portfolio company, as soon as confidentiality constraints are no longer applicable.

## **2.4 Recommendations for initiatives to be undertaken by the BVCA**

The Guidelines recommended that the BVCA should:

- Enlarge and strengthen its data gathering, analytical and reporting capabilities and should apply those capabilities to increased research activities including performance and attribution analysis for portfolio companies;
- Initiate discussions with "private equity-like" groups with the purpose of enlisting their voluntary undertaking to conform to the Guidelines; and
- Participate proactively with overseas private equity trade associations to develop a methodology for the content and presentation of fund performance information.

## 3

## REVIEW OF CONFORMITY WITH THE GUIDELINES

### 3.1 Introduction

This section summarises the findings of the Group's review of conformity with the Guidelines and considers conformity in three areas:

- Disclosure by a portfolio company: the requirements to make accounts and mid-year updates available and for the accounts to meet enhanced disclosure requirements;
- Communication by a private equity firm: the requirement to make information about the firm available in an annual report or otherwise on the firm's website; and
- Other requirements and recommendations: including the requirements for firms and companies to provide data to the industry association, to follow established reporting and valuation guidelines and to ensure timely and effective communication as well as the recommendations for the BVCA relating to research, "private equity-like" entities and fund performance measurement.

### 3.2 Overview of findings

The results of this year's review are encouraging, but also highlight that efforts are still required going forward to ensure that those new entrants to the Walker population improve their disclosure to a level equivalent to, or better than reporting by FTSE 350 companies.

Within the results there are three distinct groupings. Those portfolio companies that were reviewed in previous years demonstrate a level of reporting that is in areas above and beyond that required by the basic requirements of the Guidelines. The second grouping, new entrants in to the population, in general report to a level below that of those companies previously assessed and report at a level that achieves at least basic compliance with the Guidelines. The third grouping is those portfolio companies that have been previously assessed as not meeting the basic requirements of the Guidelines, which have all improved this year, with the exception of Doncasters, a Dubai International Capital portfolio company

The Group has retained the objective of ensuring that all companies that met the thresholds report to a level at least equivalent to or in advance of FTSE 350 companies.

The Group will identify where improvements can be made in feedback letters that are provided to private equity firms and portfolio companies.

### 3.3 Private equity firms and portfolio companies covered by the Guidelines

Details of the private equity firms and portfolio companies that have agreed to comply with the Guidelines are attached as appendices 1 and 2 to this report.

The Group has established a policy that all portfolio companies within the population will be reviewed at least once within a three year cycle, and will continue with its policy of re-reviewing companies whose reporting is regarded as below average more frequently.

Initially, ten of the companies reviewed, including eight companies that are new to the Walker population and two of those being re-reviewed, were assisted by the Group to ensure that they met the requirements of the Guidelines to a satisfactory degree. After discussion between the Group and the private equity owners of the portfolio companies concerned, nine of the companies addressed the exceptions identified and met the requirements. As such, the Group considers that twenty-nine of the thirty companies reviewed by the Group this year, when assessed in overall terms, have met the Guidelines' enhanced disclosure requirements.

All of the thirteen companies reviewed for a second or third time this year, and previously assessed as compliant, had generally good or acceptable compliance. Five companies exceeded the basic requirements in overall terms. It was observed that public companies taken into private equity ownership often provide better quality disclosure.

Of the three companies reviewed for a third time this year, and previously assessed as below average, two have significantly improved and now have acceptable levels of disclosure. The Group has reviewed the disclosures made by Doncasters, a Dubai International Capital portfolio company and have assessed them as failing to meet the guidelines.

There was a mixed standard of disclosure for strategy, market environment, non-financial KPI's, trends and factors affecting future performance and development of the business, social and community issues, and essential contractual arrangements. Whilst some companies provided good disclosure in these areas, others continued to achieve basic levels of compliance with what was expected.

The following were identified as being areas in which the standard of disclosure was generally good:

- compliance with financial risk requirements to include discussion about overall risk management objectives and policies, and risk management policies in relation to the company's leverage;
- compliance with financial position requirements to include an explanation of the year end debt and capital structure of the company and its funding requirements; and
- details of the board composition
- identity of the private equity firm.

In contrast, the following were identified as being areas in which the standard of disclosure was mixed:

- disclosure of non-financial KPI's for example around employee and environmental matters;
- disclosure of social and community issues affecting the business and the policies to address them;
- disclosure of environmental matters affecting the business, the policies in place to address them, and the impact of these policies; and
- disclosure of essential contractual arrangements such as with major suppliers and key customers.

Fourteen companies reported under International Financial Reporting Standards. Overall, accounts prepared under this basis were found to be of a higher standard than accounts prepared under UK or other Generally Accepted Accounting Principles.

Only a small number of companies included a specific statement of conformity with the Guidelines in the Annual Report. This statement is not currently a requirement, and the Group intends to recommend for consultation the inclusion of this as a requirement in the Guidelines. This would be in line with the requirements of the UK Corporate Governance Code for listed companies. The aim would be to focus attention to the requirements of the Guidelines.

### 3.4 Detailed findings

The Guidelines require that the portfolio company's audited report and accounts should be readily accessible on the company website no more than six months after the company year-end and that a summary mid-year update giving a brief account of major developments in the company (but not requiring updated accounts) should be placed on the website no more than three months after mid-year.

The requirements for portfolio company disclosures under the Guidelines can be separated into three areas:

- *Guidelines specific*: identity of the private equity firm, details on board composition and the financial review;
- *Business Review (required by UK Companies Act)*: a fair review of the business, details of principal uncertainties and risks and the use of key performance indicators; and
- *Enhanced Business Review*: additional requirements comprising information on trends and factors affecting future performance, environmental matters, employees, social and community issues and details of essential contractual arrangements.

## WALKER GUIDELINE SPECIFIC DISCLOSURES

### Identity of the private equity firm

**"The report should identify the private equity fund or funds that own the company and the senior executives or advisers of the private equity firm in the UK who have oversight of the company on behalf of the fund or funds".**

To comply with this requirement, the identity of the private equity firm should be disclosed within the annual report.

#### *Findings*

The requirement was met by all portfolio companies within the the sample of thirty companies. Seven companies went further than the basic requirement and also disclosed the name of the managed fund in the private equity group as well as that of the private equity firm itself. There was one instance where a company disclosed the name of the private equity firm on the company's website but not in the annual report, we have regarded this as an area that the portfolio company need to improve but have not deemed this to be an area of non compliance with the Guidelines.

### Details on board composition

#### *Requirement*

**"The report should give detail on the composition of the board, identifying separately executives of the company, directors who are executives or representatives of the private equity firm and directors brought in from outside to add relevant industry or other experience".**

The report should go beyond the Companies Act requirements relating to directors and should include additional disclosure to highlight which of the directors were also directors of, or had been appointed by, the private equity firm.

### *Findings*

This requirement was met by all thirty companies in the sample and was achieved in a variety of ways. Eleven companies included full biographies of each director, including areas of expertise, similar to the reporting format adopted by public companies. These were good examples and went further than the requirements. Other companies provided a table of directors stating whether they were appointed by the private equity firm or not. Another method used was to include a list of directors with a footnote explaining who is from the private equity firm.

### **Financial review**

#### *Requirement*

**“The financial review should cover risk management objectives and policies in the light of the principal financial risks and uncertainties facing the company, including those relating to leverage, with links to appropriate detail in the footnotes to the balance sheet and cash flow section of the accounts”.**

The report should include an explanation of the year-end debt and capital structure of the company, its funding requirements and discussion of the overall risk management objectives and policies of the company, including those in relation to the company's leverage.

#### *Findings*

The analysis of this requirement was divided into two parts; firstly the financial position of the entity at year end and secondly the identification of financial risks. All companies achieved compliance with this requirement.

#### *Financial position at year end*

Not all companies defined or reconciled non accounting measures they had used in addition to the numbers included within the financial statements. Several of the sample companies had inserted a new holding company during the current or preceding year as part of an acquisition. The best examples included proforma information to enable meaningful comparatives to be provided, but this was not always the case.

This requirement was one of the most successfully met by the portfolio companies reviewed, with six companies having good disclosure in this area.

#### *Financial risks*

Discussions were often at a high level and not always company specific. The majority of companies included disclosure on the company's exposure to price risk, credit risk, liquidity risk and cash flow risk as required by the accounting standards and Companies Act. However, the level of disclosure within this area varied considerably.

Overall four companies were considered good examples of disclosure of financial risks.

## **BUSINESS REVIEW (REQUIRED BY UK COMPANIES ACT)**

### **Fair review of the business**

#### *Requirement*

**“The business review must contain a fair review of the company's business.”**

To comply with these requirements the annual report and accounts should include:

- A statement of company strategy setting out what the company is trying to achieve and the priorities for how it plans to achieve those objectives; and
- A description of the market in which the company operates should be given as well as how the competitive, regulatory and macro-economic forces impact on the business.

### *Findings*

The analysis of this requirement was divided into two parts: firstly the business strategy of the entity and secondly the market environment of the entity.

#### ***Business strategy***

Once again the level of disclosure in this area was varied. Twenty companies in the sample made a clear statement about their overall strategy, with nine providing details of key strategic priorities. Of the remaining eleven companies nine provided some information on strategy but fell short of the explicit statement we were looking for. One company, Doncasters, did not provide any disclosure on strategy and objectives. Six companies used the statement to underpin the annual report with key terms used consistently throughout.

#### ***Market environment***

Twenty one companies of the sample reviewed explain their market environment, of these, eleven companies provided a good detailed analysis of the market environment in which they operate. Overall all companies met this requirement although there was some variation in the standard of disclosure, companies provided a comprehensive analysis useful graphics and diagrams were used to aid the disclosures.

### **Principal risks and uncertainties facing the company**

#### ***Requirement***

**“The business review must contain a description of the principal risks and uncertainties facing the company”.**

To comply with this requirement the annual report and accounts should include an explicit identification of the principal risks and uncertainties facing the company and avoid a long list of boiler-plate risks.

### ***Findings***

This was an area of good compliance with the Guidelines with no exceptions and eight companies providing good disclosure. However, in a small number of companies the risks had to be inferred from the other information provided rather than being explicitly identified.

### **Key performance indicators (KPIs)**

#### ***Requirement***

**“The review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include analysis using financial key performance indicators and where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters. “Key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively”.**

To comply with the requirements the annual report and accounts should include an explicit identification of the KPIs so as to avoid any misunderstanding or, at the very least, provide performance data, from which a reader might reasonably identify their KPI’s. Both financial and non financial KPIs should be provided.

### ***Findings***

The analysis of this requirement was divided into a review of the financial and non financial KPIs.

#### ***Financial key performance indicators***

Overall there was a mixed response to this requirement, however, companies either implicitly or explicitly disclosed some financial KPIs. Six companies achieved a good level of disclosure, clearly aligning their KPIs with their strategy, meanwhile, four companies

provided below average disclosures, but still met the criteria. There were no exceptions to this requirement.

### ***Non financial key performance indicators***

All companies provided non financial KPIs, either explicitly or implicitly and limited metrics were given. On average there were two non financial KPIs per company. There were six good examples of disclosure but for most of the companies reviewed this is an area for improvement. This is particularly marked for companies which identified operational strategies and risks but did not identify corresponding KPIs. The utility companies provided good disclosures of non-financial KPIs, perhaps due to the regulated nature of their businesses.

### **Enhanced Business Review**

This was the third year of Enhanced Business Review requirements. Given the increased amount of examples available compliance should have been easier than last year.

### **Trends and factors affecting future development, performance or position**

#### ***Requirement***

*“The business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include the main trends and factors likely to affect the future development, performance and position of the company’s business”.*

To meet these requirements the annual report and accounts should include a separate clearly headed section setting out a high level forward looking description of trends and future strategic priorities.

#### ***Findings***

Overall all portfolio companies complied with this requirement and we have seen some significant improvements since last year, but the response remains mixed. The content of the annual reports reviewed was historical in focus providing a review of the current year performance but lacking a discussion of future performance. This largely reflects the perceived commercial sensitivity of providing a forward looking orientation and judgemental, rather than the factual nature of compliance.

Examples of poor approaches to compliance include the use of high level generic information with little relevance to the company overall. Some companies provided aspects of a forward looking orientation but scattered throughout the report. Few companies provided quantitative information to support their discussion.

Six companies provided good disclosure. Given the market conditions we expected to see an increase in the discussion of current market trends as management try to provide a sense of quality and sustainability of corporate performance.

### **Environmental matters**

#### ***Requirement***

*“The business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include information about environmental matters (including the impact of the company’s business on the environment), including information about any policies of the company in relation to those matters and the effectiveness of those policies”.*

The section on environmental factors should identify those factors which most affect the type of business being reported on, supported by quantifiable evidence and targets where applicable.

**Findings**

Overall there has been a broad compliance with this requirement. There is evidence of improvements in the levels of disclosure since last year, although the responses varied considerably between high level statements and detailed disclosure. One company, Doncasters, did provide any information on environmental factors influencing the company, meanwhile five companies provided a good level of disclosure on environmental matters.

**Employees****Requirement**

*"The business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include information about the company's employees including information about any policies of the company in relation to those matters and the effectiveness of those policies".*

Employee disclosures should go beyond those previously required by the Companies Act and to the extent employees are a critical resource of the business, there should be a discussion of the management and development of employees including recruitment, training, and development and retention practices.

**Findings**

There was a broad level of compliance in this area, but there are significant opportunities for improvement. Three companies went beyond the Guidelines and provided good disclosure. All companies reviewed disclosed information on their employees. Of the companies that provided information in addition to the Companies Act requirements, very few companies provided a significant amount of detailed information. The companies that did provide a good and comprehensive analysis illustrated with tables and graphics.

**Social and community issues****Requirement**

*"The business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include information about social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies".*

Details should be provided at a high level of the social and community issues affecting the business that go beyond details of political and charitable donations.

**Findings**

Twenty nine companies out of the sample of companies complied with this requirement, with only Doncasters failing to comply. Whilst there were some good examples, this remains an area for improvement. There were few examples of company-specific discussion or information relevant to strategy.

**Essential contractual or other arrangements****Requirement**

*"The business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include, subject to subsection (11) [disclosure seriously prejudicial in opinion of the directors], information about persons with whom the company has contractual or other arrangements which are essential to the business of the company".*

Details of essential contractual arrangements should identify the parties and arrangements involved and not just provide details of supplier payment policies and creditor days. Where companies do not have any contractual or other arrangements that are essential to the business, this should be clearly stated.

### *Findings*

Although this is a developing area and not immediately obvious to judge objectively, the Group considers that most of the companies reviewed could improve disclosure with more explicit references of key contracts and resources and the impact on business. Seven companies provided good disclosure in this area, which is a significant improvement on last year. Often the existence of contractual or other arrangements was scattered throughout the report and there were few examples of companies which provided the information under a specific heading. This is not inconsistent with what has been observed in reporting by listed companies.

## **3.5 Review of disclosure by private equity firms**

### **Overview**

#### *Requirement*

**“A private equity firm should publish an annual review accessible on its website or ensure regular updating of its website to communicate information about itself, its portfolio companies and its investors along with a commitment to the guidelines.”**

The requirement allows firms either to prepare a separate annual report or include the information generally within the firm’s website.

### *Findings*

All ten companies in the sample selected met the requirements. Better examples included case studies of realised investments, details of corporate and social responsibility matters and detail about the structure and governance of the firm.

## **3.6 Other requirements and recommendations**

### **Introduction**

The Guidelines include additional requirements for private equity firms and portfolio companies regarding the provision of data to the industry association, the adoption of established valuation and reporting guidelines and timely and effective communication at a time of significant strategic change. They also include recommendations for the industry association regarding research capabilities and activities, engagement with “private equity-like” entities and fund performance measurement.

### **Findings**

- Private equity firms, except Dubai International Capital and GI Partners (as noted earlier), owning portfolio companies that meet the criteria are cooperating with the BVCA in collating the detailed information required to prepare the ‘BVCA Annual Report on the Performance of Portfolio Companies’ commissioned by the BVCA from Ernst & Young;
- The private equity firms apply guidelines published by the International Private Equity and Venture Capital Board (‘IPEV’) or by the Private Equity Industry Guidelines Group (‘PEIGG’) or, in the case of public companies, applicable accounting standards; and
- Where portfolio companies have undergone significant strategic change the private equity firms ensured timely and effective communication.

**Performance of portfolio companies**

The annual review of the performance of portfolio companies, undertaken by the BVCA and Ernst and Young has yet to be finalised. The report will be published on the BVCA website at [www.bvca.co.uk/Research](http://www.bvca.co.uk/Research).

**Engagement with “private equity-like” entities**

The Group and the BVCA are continuing to hold discussions with other potential private equity or “private equity-like” firms, including sovereign wealth funds, with the purpose of enlisting their voluntary conformity with the Guidelines

**Fund performance measurement**

The Guidelines recommended that the BVCA should participate proactively with private equity trade associations beyond the UK and with the limited partner community to develop a consistent methodology for the content and presentation of fund performance information.

The BVCA is continuing to hold discussions with other European private equity trade associations covering a number of areas including fund performance measurement.

# APPENDIX 1: PRIVATE EQUITY FIRMS

# A1

**The following private equity firms have been deemed as necessary to comply with the Guidelines:**

3i Group plc	GI Capital Partners**
Advent International plc	GS Capital Partners
Alinda Capital***#	Hellman and Friedman
Apax Partners	Henderson
Apollo Global Management LLC**	KKR & Co Ltd
Arcapita #	Lion Capital
Arle Capital Partners**	Lyceum Capital
Bain Capital Ltd	Macquarie *
BC Partners	Montagu Private Equity LLP
Bridgepoint	Onex Partners***
Caird Capital**	Ontario Teachers' Private Capital***#
Candover	PAI Partners
CCMP Capital Advisors (UK) LLP	Permira Advisers LLP
Charterhouse Capital Partners LLP	Providence Equity LLP
Cinven	Terra Firma Capital Partners Limited
Clayton Dubilier & Rice LLC	TDR Capital**
Close Brothers Private Equity LLP	The Blackstone Group International Partners LLP
CVC Capital Partners Ltd	The Carlyle Group
Doughty Hanson & Co Ltd	TPG Capital LLP
Dubai International Capital #*	Vision Capital Ltd
Duke Street Capital	Warburg Pincus
Global Infrastructure Partners#**	

\* Not a member of the BVCA

\*\* Addition this year

# Private equity-like entity

## A2

## APPENDIX 2: PORTFOLIO COMPANIES

The following portfolio companies either meets the criteria set out in the Guidelines or have committed to conform to the Guidelines on a voluntary basis.

### Required portfolio companies

PORTFOLIO COMPANY	OWNERS
Acromas (AA / Saga)	Charterhouse / CVC / Permira
Airwave Solutions	Macquarie
Alliance Boots	KKR
Annington Homes	Terra Firma
Associated British Ports	GS Capital Partners
Biffa	Montagu Private Equity
Birds Eye Iglo	Permira
Brakes Group	Bain Capital
British Car Auction***	Clayton Dubiler & Rice
British Vita***	TPG
Card Factory***	Charterhouse
Care UK***	Bridgepoint
Camelot***	Ontario Teachers' Private Capital
Civicia**	3i
CenterParcs	Blackstone
DFS**	Advent
Domestic and General Group*	Advent
Doncasters *	Dubai International Capital
DX Group *	Candover
Edwards Group*** Limited	CCMP Capital Advisors (UK)
Emap (as part of Guardian Media Group)	Apax
Enterprise	3i
Enserve**	Cinven
Equiniti	Advent
Eversholt Rail***	3i
Exova**	Clayton Dubiler & Rice
Expro	GS Capital Partners
Fat Face***	Bridgepoint
Findus Group (Foodvest)	Lion Capital
Fitness First	BC Partners
Gatwick Airport	Global Infrastructure Partners
Gala Coral*	Apollo, Cerberus, Park Square and York Capital Management
Gondola Holdings	Cinven
Inspicio**	3i
Iris*	Hellman & Freidman / Hg Capital
John Laing	Henderson

Just Retirement***	Permira
Kellen Group (Phoenix Natural Gas)*	Terra Firma
Kwik Fit	PAI
London City Airport***	Global Infrastructure Partners
Merlin Entertainments Group Capital	Blackstone / Dubai International
Mitchells & Butler / Stonegate Pub Co**	TDR Capital
Moto	Macquarie
National Car Parks	Macquarie
NCP Services	3i
New Look	Permira / Apax
Northgate Information Solutions*	KKR
Odeon & UCI Cinemas	Terra Firma
Osprey (AWG)	3i
Park Resorts Limited	GI Partners
Partnerships in Care Limited	Cinven
Pets at Home***	KKR
Phones4U*	Providence
PHS	Charterhouse
QMH	GS Capital Partners
South Staffordshire Water***	Alinda Capital
Spire Healthcare (formerly BUPA hospitals)	Cinven
Thames Water*	Macquarie
The Vita Group*	TPG
Tomkins***	Onex Partners
Trader Media (as part of Guardian Media Group)	Apax
Travelex	Apax
Travelodge	Dubai International Capital
TSL**	Charterhouse
United Biscuits	Blackstone / PAI
Viridian Group	Arcapita / Electricinvest
Wales & West Utilities	Macquarie
Weetabix *	Lion Capital
World Pay	Advent / Bain

### Voluntary portfolio companies

PORTFOLIO COMPANY	OWNERS
AWAS*	Terra Firma
Deutsche Annington Immobilien*	Terra Firma
EMI Group	Terra Firma
General Healthcare Group	Apax
HIT Entertainment	Apax
Infinis Ltd	Terra Firma
Keepmoat *	Caird Capital
Talaris	Carlyle
Tragus	Blackstone

\* Accounts reviewed this year

\*\* Addition this year

## A3

## APPENDIX 3: GUIDELINES FOR ENHANCED DISCLOSURE BY PORTFOLIO COMPANIES AND PRIVATE EQUITY FIRMS

### 1. Conformity with each of the guidelines should be on a **comply or explain** basis.

Where an explanation is given for “non-compliance”, this should be posted alongside other related relevant disclosures called for under these guidelines on the website of the private equity firm or portfolio company.

### 2. Definition of a **private equity firm** for the purpose of the guidelines:

A firm authorised by the FSA that is managing or advising funds that either own or control one or more UK companies or have a designated capability to engage in such investment activity in the future where the company or companies are covered by the enhanced reporting guidelines for portfolio companies.

### 3. Definition of a **portfolio company** to be covered by enhanced reporting guidelines (as amended by the GMG in April 2010):

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 £210 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 £350 million and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents.

### 4. Content of enhanced disclosure by a portfolio company

A portfolio company should include as part of its audited annual report and accounts the following enhanced disclosures, none of which call for disclosures beyond those specified for quoted companies in the Companies Act 2006 or other disclosure requirements applicable to quoted companies. Such reporting should throughout focus on substance rather than form and on the economic reality of a company or group rather than its legal structure.

- a) The report should identify the private equity fund or funds that own the company and the senior executives or advisers of the private equity firm in the UK who have oversight of the company on behalf of the fund or funds.
- b) The report should give detail on the composition of the board, identifying separately executives of the company, directors who are executives or representatives of the

private equity firm and directors brought in from outside to add relevant industry or other experience.

- c) The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including sub-section 5 (which is ordinarily applicable only to quoted companies). Section 417 is reproduced at Annex D below, sub-section 5 provides:

“(5) In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include-

- a) the main trends and factors likely to affect the future development, performance and position of the company’s business; and
- b) information about—
  - (i) environmental matters (including the impact of the company’s business on the environment),
  - (ii) the company’s employees, and
  - (iii) social and community issues,

including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
- c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.”

- d) The financial review should cover risk management objectives and policies in the light of the principal financial risks and uncertainties facing the company, including those relating to leverage, with links to appropriate detail in the footnotes to the balance sheet and cash flow section of the accounts.
- e) To the extent that the guidelines at (b) and (c) above are met by existing market disclosures in respect of debt or equity issuance on public markets, this should be explained with the relevant material made accessible on the company’s website; and where compliance with these guidelines, in particular in respect of any forward-looking statement, might involve conflict with other regulatory obligations, the reason for non-compliance should similarly be explained on the company website.

## 5. Form and timing of public reporting by a portfolio company

- 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 accounts) to be placed on the website no more than 3 months after mid-year.

## 6. Data input by a portfolio company to the industry association

As input for the enhanced role in data collection, processing and analysis to be undertaken on an industry-wide basis by the BVCA, portfolio companies should provide to the BVCA (or to a professional firm acting on its behalf) data for the previous calendar or company accounting year on:

- trading performance, including revenue and operating earnings
- employment
- capital structure
- investment in working and fixed capital and expenditure on research and development
- such other data as may be requested by the BVCA after due consultation and where this can be made available without imposing material further cost on the company.

## 7. Communication by a private equity firm

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-authorized 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 funds or funds that invest or have a designated capability to invest in companies that would be UK portfolio companies for the purpose 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.

## 8. Reporting to limited partners

In reporting to their limited partners on their interests in existing funds and for incorporation in partnership agreements for new funds, private equity firms should:

- a) follow established guidelines such as those published by EVCA (or otherwise provide the coverage set out in such guidelines) for the reporting on and monitoring of existing investments in their funds, as to the frequency and form of reports covering fund reporting, a summary of each investment by the fund, detail of the limited

partner's interest in the fund and details of management and other fees attributable to the general partner (a summary of the EVCA guidelines is at Annex E).

- b) value investments in their funds using either valuation guidelines published by the International Private Equity and Venture Capital Board (IPEV) or those published by the Private Equity Industry Guidelines Group (PEIGG) or such other standardised guidelines as may be developed in future.

## 9. Data input by private equity firms to the industry association

Data to be provided on a confidential basis to an accounting firm (or other independent third party) appointed by the BVCA to cover:

- a) In respect of the previous calendar year
- the amounts raised in funds with a designated capability to invest in UK portfolio companies
  - acquisitions and disposals of portfolio companies and other UK companies by transaction value
  - estimates of aggregate fee payments to other financial institutions and for legal, accounting, audit and other advisory services associated with the establishment and management of their funds
  - such other data as the BVCA may require for the purpose of assessment of performance on an industry-wide basis, for example to capture any material change over time in the terms of trade between general partners and limited partners in their funds
- b) In respect of exits from UK portfolio companies over at least the previous calendar year to support the preparation on an aggregate industry-wide basis of an attribution analysis designed to indicate the major sources of the returns generated by private equity. In broad terms, these are the ingredients in the total return attributable respectively to leverage and financial structuring, to growth in market multiples and market earnings in the relevant industry sector, and to strategic direction and operational management of the business. The relevant data, which will unavoidably involve important subjective assessment, will involve content and format at the outset as in Annex F to the guidelines, to be reviewed and refined as appropriate in the light of initial experience and discussion between the BVCA, with the third-party professional firm engaged for this and related analysis, and the relevant private equity firms.

## 10. Responsibility at a time of significant strategic change

A private equity firm should commit to ensure timely and effective communication with employees, either directly or through its portfolio company, in particular at the time of a strategic initiative or a transaction involving a portfolio company as soon as confidentiality constraints cease to be applicable. In the event that a portfolio company encounters difficulties that leave the equity with little or no value, the private equity firm should be attentive not only to full discharge of its fiduciary obligation to the limited partners but also to facilitating the process of transition as far as it is practicable to do so.

## A4

## APPENDIX 4: GUIDANCE ON THE DEFINITION OF A PRIVATE EQUITY FIRM FOR THE PURPOSE OF THE GUIDELINES

The guidance that follows is for the purpose of private equity firms when considering the definition of 'control' which forms part of the definition of a 'private equity firm' in the Guidelines.

### **New Walker companies**

A portfolio company of a private equity firm or firms ("private equity firm") becomes a Walker company, subject to meeting the other criteria as laid out in the guidelines, when any one of the following criteria is met:

1. It is evident the private equity firm holds a majority stake (>50% of the ordinary shares) in the underlying business;
2. If a private equity firm, in its own accounts, discloses that it maintains control of the portfolio company;
3. A private equity firm has the ability to direct the financial and operating policies of a portfolio company with a view to gaining economic benefits from its activities. Consideration shall include, but not be limited to: management control; board seats; directors indicative of significant influence.

Where more than one private equity firm invests in a portfolio company, those firms will be jointly responsible for ensuring that the portfolio company applies the guidelines.

### **Walker company exits**

A portfolio company of a private equity firm is eligible for removal from the mandatory Walker population when any one of the following criteria is met:

1. A private equity firm exits via an Initial Public Offering, even if the private equity firm retains a majority stake. The newly listed vehicle will be bound by the reporting requirements mandatory for listed companies;
2. An event occurs, such as a restructuring, whereby a private equity firm is no longer able to control the financial and operating policies of a portfolio company.

To ensure that the guidelines consider instances where there has been a dilution of ownership post initial acquisition, a private equity firm that holds 20 percent or more of the voting rights following such dilution will be presumed to exercise significant influence over that portfolio company, and will continue to be a Walker company, unless the contrary is shown. This test will not be applied at initial acquisition by a private equity firm, and will only be applied where there is a dilution of ownership post initial acquisition.

The British Venture Capital Association, with the assistance of Ernst & Young, the body commissioned to conduct research into the performance of portfolio companies, will discuss specific cases with private equity firms and feedback findings to the Guidelines Monitoring Group for its consideration.

# APPENDIX 5: INITIAL RECOMMENDATIONS FOR INITIATIVE BY THE INDUSTRY ASSOCIATION

# A5

These recommendations for initiative by the BVCA cover:

- the BVCA's industry-wide reporting and intelligence function;
- the establishment of a guidelines review and monitoring capability
- for engagement with major investors and their associated entities or affiliates which, though "private equity-like", do not require authorisation by the FSA;
- and for engagement in discussion with relevant private equity groupings outside the UK in the development of common standards, in particular in respect of fund performance.

## A. Reporting and intelligence

1. The BVCA should boost significantly its capability for the collection, processing and analysis of data submitted by private equity firms and portfolio companies. While the main focus of this report is, as indicated and defined at the outset, on the activities of large buyout firms and their portfolio companies, the BVCA's reporting and intelligence function covers the whole of the private equity industry, including venture and development capital. The recommendation here is that this overall capability should be boosted so that the BVCA becomes the recognised authoritative source of intelligence and analysis both of larger-scale and of venture and development capital private equity business based in the UK and a centre of excellence for the whole industry. It is recommended that, alongside the strengthening of the executive that is already in train, the BVCA should retain the services on a fee-paying basis of one or more professional firms to assist in this task as a means of quality input and assurance, as also for the assurance of confidentiality in respect of data that is provided exclusively for incorporation in an aggregation process.
2. This recommended enlargement and strengthening in the BVCA's data gathering, analytical and reporting capability will call for materially increased data input from portfolio companies covered by the enhanced reporting guidelines and from the private equity firms investing in those companies. Responsibility for the sourcing of specific data flows respectively as between private equity firms and portfolio companies should be determined by the BVCA on the basis of prior consultation, to include for the previous calendar year or portfolio company reporting period:
  - amounts raised in funds with designated scope to invest in portfolio companies in the UK
  - categorisation of limited partners by geography and by type
  - scale of acquisitions of UK portfolio companies by transaction size at the time of acquisition

- trading performance of portfolio companies in terms of revenues and operating earnings
  - estimates of levels and changes in employment, new capital investment and research and development expenditure by portfolio companies
  - aggregate fee payments by private equity firms and portfolio companies to other financial institutions and for legal, accounting and other advisory services
  - such other data collection and analysis as may be required in support of a comprehensive evidence-based assessment capability on the performance and economic impact of private equity in the UK, with particular reference to employment, productivity, investment and innovation.
3. Data should be collected from private equity firms to support attribution analysis in respect of exits in at least the previous calendar year to provide on an industry wide basis annually an assessment of percentages of total return over the holding period attributable to
    - leverage and financial structuring
    - growth in market multiples and market earnings in the relevant industry sector
    - strategic direction and operational management of the business.
  4. It is recommended that the BVCA should publish an enlarged version of its economic impact and associated surveys to cover both the industry overall and giving separate data and analyses for
    - larger-scale private equity business to present an authoritative evidence based account of the performance of the industry in the UK over the holding periods of portfolio companies and of the subsequent performance of former portfolio companies where exit by the fund or funds is to the public market by means of an IPO process.
    - venture and development capital, which will call for an increase in the sample sizes for data collection.

## **B. Guidelines review and monitoring**

For the purpose of ensuring that the guidelines for disclosure by portfolio companies and private equity firms remain appropriate in the light of changing conditions and to monitor conformity with the guidelines, the BVCA should establish a Guidelines Review and Monitoring Group (the Group) with the following elements:

1. Terms of reference of the Group:
  - a) to keep the guidelines under review and to make recommendations for changes when necessary to be implemented by the BVCA after due consultation to ensure that the guidelines remain appropriate in changing market and industry circumstances
  - b) to review the extent of conformity with the guidelines, through compliance or explanation, on an ongoing basis
  - c) to publish a brief annual report on the work of the Group

## 2. Composition of the Group:

- a) a Chairman with substantial experience but independent of private equity
- b) total size of 5 to include 2 executives of GPs or advisers to funds investing in portfolio companies covered by the guidelines
- c) 2 independent members additionally to the Chairman with substantial professional or business experience
- d) thus a majority of independents.

## 3. Appointment of the Group:

- a) to be appointed by the Chairman and Council of the BVCA on the advice of a Nominations Committee of the Council
- b) the Chairman of the Group to have a term of 3 years with provision for appropriate rotation of other members to ensure continuity
- c) the Chairman and members to be paid an appropriate fee.

## 4. Operations of the Group:

The guidelines review and monitoring processes under paragraph 1 (a) and (b) above to be supported by an accounting firm appointed by and under the direction of the Group:

- a) undertaking data processing and assessment on the basis of initial self assessment on conformity by private equity firms and portfolio companies
- b) appropriate spot-check sampling
- c) funded under budget provisions agreed between the Group and the Chairman and Council of the BVCA.

## 5. Conformity with the guidelines:

On the basis that BVCA member firms commit to conform to the guidelines as a condition of membership, the Group would discuss in confidence with a private equity firm or portfolio company any case of non-conformity which it considered to be material. In the absence of commitment to early remedial action, the matter would be for discussion and determination of appropriate action between the Chairman of the Group and the Chairman of the BVCA and might, after due process, involve public disclosure and termination of membership of the BVCA.

### C. Engagement with “private equity-like” entities

1. The BVCA should identify entities whose business, though not requiring authorisation by the FSA, is similar to that of the private equity firms covered by these guidelines, to include in particular the UK affiliates of sovereign wealth funds and other major principal or proprietary investors whose funding is not dependent on limited partners.
2. The BVCA should initiate discussion with such groups (where appropriate, in the case of sovereign wealth funds, after consultation with government) with the

purpose of enlisting their voluntary undertaking to conform to the guidelines, on the basis that this will be in their own interest as a manifest of their commitment to established good practice as to disclosure and transparency in such business conducted in the UK.

3. The BVCA is recommended to create an appropriate category of membership to enable such entities to be associated appropriately with the activities of the association.

#### **D. Fund performance measurement.**

The BVCA should participate proactively with private equity trade associations beyond the UK and with representatives of the domestic and international limited partner community to develop a methodology for the content and presentation of fund performance information with particular relevance for prospective future limited partners as well as those in existing funds. The Global Investment Performance Standards (GIPS) prepared under the auspices of the CFA Institute represent a possible approach on which the BVCA should engage during the impending five year review of GIPS. Any standard to emerge from this process should be incorporated in the guidelines in due course.

# APPENDIX 6: EXTRACT FROM COMPANIES ACT, 2006

# A6

## Section 417 Contents of directors' report: business review

1. Unless the company is subject to the small companies' regime, the directors' report must contain a business review.
2. The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty under section 172 to promote the success of the company.
3. The business review must contain:
  - a) a fair review of the company's business, and
  - b) a description of the principal risks and uncertainties facing the company.
4. The review required is a balanced and comprehensive analysis of:
  - a) the development and performance of the company's business during the financial year, and
  - b) the position of the company's business at the end of that year, consistent with the size and complexity of the business.
5. In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:
  - a) the main trends and factors likely to affect the future development, performance and position of the company's business; and
  - b) information about:
    - i) environmental matters in
    - ii) the company's employees, and
    - iii) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
  - c) subject to subsection 11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

If the review does not contain information of each kind mentioned in paragraphs b)i), ii) and iii) and c), it must state which of those kinds of information it does not contain.

6. The review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:
  - a) analysis using financial key performance indicators, and
  - b) where appropriate, analysis using other key performance indicators, including information relating to environmental matters and employee matters.

"Key performance indicators" means factors by reference to which the development, performance or position of the company's business can be measured effectively.
7. Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the directors' report for the year need not comply with the requirements of subsection 6) so far as they relate to non-financial information.
8. The review must, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts.
9. In relation to a group directors' report this section has effect as if the references to the company were references to the undertakings included in the consolidation.
10. Nothing in this section requires the disclosure of information about impending developments or matters in the course of negotiation if the disclosure would, in the opinion of the directors, be seriously prejudicial to the interests of the company.
11. Nothing in subsection 5) c) requires the disclosure of information about a person if the disclosure would, in the opinion of the directors, be seriously prejudicial to that person and contrary to the public interest.



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**GUIDELINES**  
**MONITORING** 