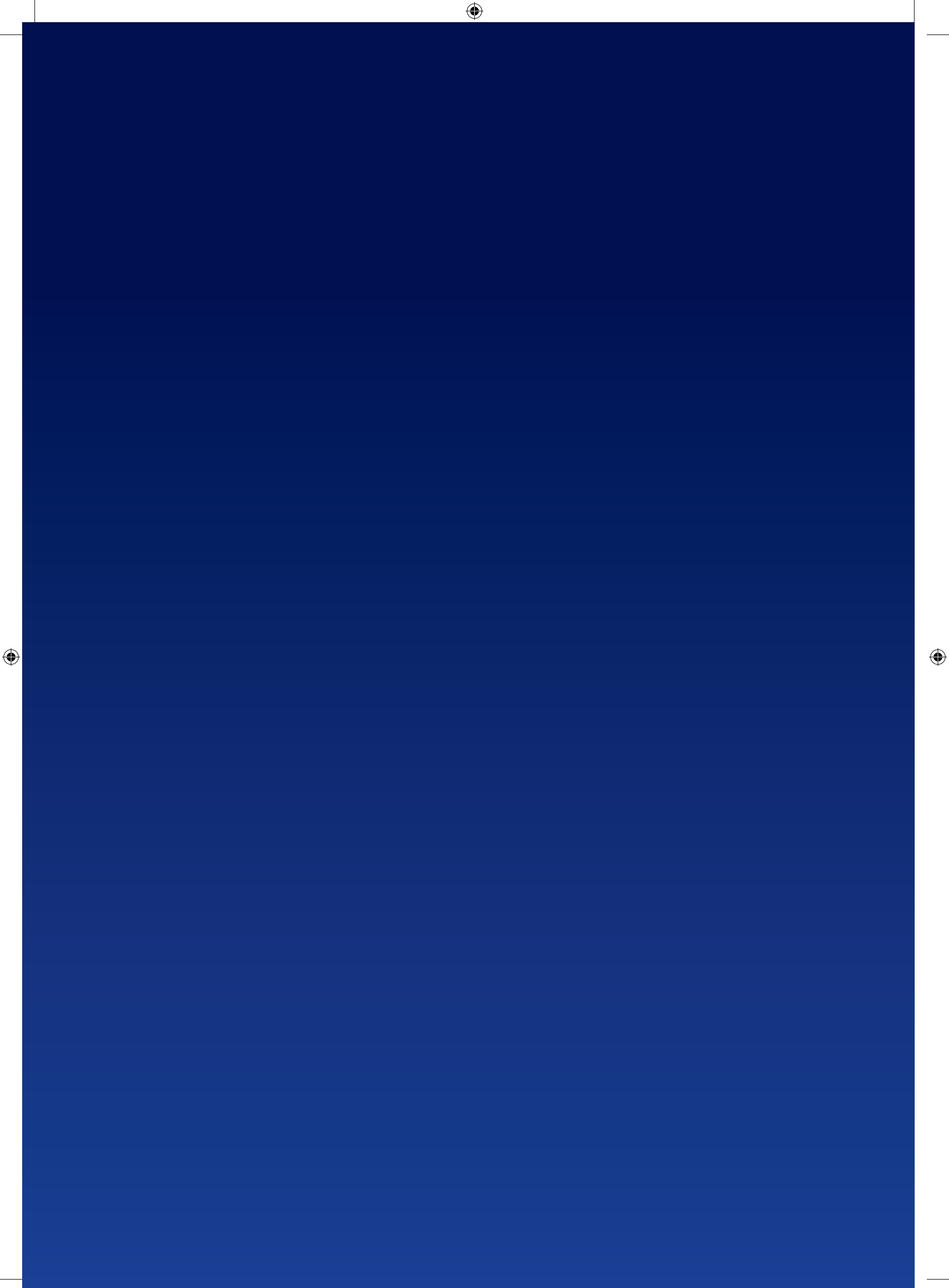


# Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

**SECOND REPORT** – DECEMBER 2009



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# EXECUTIVE SUMMARY

## 1.1 Introduction

This is the second 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 BVCA for changes to the Guidelines if required. The Group's aim remains to guide and assist the industry in improving transparency and disclosure.

## 1.2 The Guidelines

In February 2007, the British Private Equity and Venture Capital Association (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 (attached as appendix 3) in November 2007.

The Guidelines require additional disclosure and communication by private equity firms and their portfolio companies where the portfolio companies meet the Guidelines criteria. The criteria together with details of the full requirements under the Guidelines are set out in appendix 3.

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

Following the publication of the Group's first full report in January 2009, an update report was issued in April 2009. The update report included a recommendation that the criteria for defining portfolio companies required to conform to the Guidelines should be expanded. The amended definition applies to UK companies acquired by one or more private equity firms where the enterprise value at acquisition is greater than £500m (or where the market capitalisation together with the premium for acquisition of control was in excess of £300m 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.

The recommendations contained in the Group's update report were accepted by the BVCA and the change to the criteria was implemented with immediate effect. All private equity firms with portfolio companies covered by the Guidelines, including those covered for the first time as a consequence of the change to the criteria, agreed to conform with the Guidelines and are covered by this report.

## 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, former Group Finance Director of Smiths Group and Jeannie Drake, former Deputy General Secretary of the CWU (The Communications Workers Union). Representing the private equity industry are: Robert Easton, Managing Director at The Carlyle Group and David Blitzer, 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 their portfolio companies that have agreed to comply with the Guidelines are attached as appendices 1 and 2 to this report.

### Private equity firms

All private equity firms that meet the criteria have conformed with the Guidelines. Thirty four private equity firms are covered by the Guidelines this year. Within this population, two “private equity-like” firms not strictly covered by the Guidelines, Arcapita and Dubai International Capital, have continued to conform on a voluntary basis. Two non BVCA members have also continued to participate on a voluntary basis, Macquarie and the French private equity firm PAI Partners.

### Portfolio companies

A total of 60 portfolio companies are covered by the Guidelines this year. Of this number, 45 strictly met the criteria set out in the Guidelines and 15 complied on a voluntary basis.

This compares to a total of 54 portfolio companies that were covered by the Guidelines last year, 27 of which strictly met the criteria and 27 that complied on a voluntary basis. The increase in the number of portfolio companies covered by the Guidelines this year is a consequence of the change to the criteria recommended by the Group and adopted by the BVCA in April 2009.

The Group and the BVCA are continuing to discuss the possibility of enlisting voluntary conformity from other potential private equity and “private equity-like” firms that are not currently required to conform.

## 1.5 Review of conformity

As last year, PricewaterhouseCoopers LLP (‘PwC’), were 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 2009. This report summarises the findings of that exercise along with the Group’s own review of the other requirements of the Guidelines.

### Overview

There continues to be a high level of commitment to the Guidelines from the private equity industry. In particular, the disclosures made by the private equity firms themselves have improved significantly and all private equity firms covered by the Guidelines met all the requirements without exception.

A substantial majority of the portfolio companies reviewed this year made good or acceptable disclosures with only a limited number of exceptions. Overall, the quality of the disclosures made by the sample of portfolio companies reviewed this year is similar to the quality of disclosure found in last year’s review. Similar to last year, the quality of the disclosures varies significantly within the sample with some firms going much further than the requirements.

PwC perform a similar review of the standard of disclosure for FTSE 350 companies. Based on this review they have assessed that on balance, the standard of disclosure made by the portfolio companies covered by the Guidelines and reviewed this year is broadly consistent with the average standard of disclosure within the FTSE 350.

It is recognised that the efforts made by the private equity industry so far are encouraging, but improvement in some areas is possible. The Group sees its role not only as assessing compliance with the Guidelines, but also in encouraging the industry to progressively improve levels of transparency. With this in mind PwC have been commissioned by the Group to produce guidance on best practice in conforming with the Guidelines. This guidance will include an analysis of the detailed requirements and a summary of best practice, using examples from the reviews conducted over the last two years. The guidance will be made available in early 2010.

As last year, the Group will also be writing individually to the private equity firm owners of all the portfolio companies reviewed this year, setting out the findings of this year's review and making recommendations for improvements to the disclosures for next year.

### **Portfolio companies**

As last year, PwC reviewed a sample of the total population of 60 portfolio companies. This year's sample comprised 32 portfolio companies, made up of 25 companies that were not reviewed last year and seven companies that were re-reviewed this year as a consequence of having inadequate disclosures last year.

In assessing conformity, the requirements under 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.

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

The disclosure requirements relating to the financial position, financial risks and principle risks and uncertainties were generally well met. The disclosure in respect of non financial key performance indicators ('KPIs') remains an area for improvement and whilst the majority of companies met the requirement, few companies clearly aligned their KPIs with their strategy.

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

The standard of disclosures in respect of social and community issues, environmental matters and essential contractual arrangements was mixed. A number of companies provided detailed disclosures in these areas, but several fell short of the requirements. The Enhanced Business Review was required for listed companies for the first time for 31 December 2008 year-ends. Consequently, when the portfolio companies were preparing their financial statements there were few examples of disclosure available in respect of these requirements.

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

Overall the Group considers that all 32 portfolio companies reviewed by the Group this year have met the Guidelines' enhanced disclosure requirements.

Initially, five of the companies reviewed, including two of those being re-reviewed, were assessed by the Group as not having met the requirements to a satisfactory degree. After discussion between the Group and the private equity owners of the portfolio companies concerned, the companies included supplemental reports on their websites addressing the missing disclosures. As a consequence of the additional disclosures provided, all five companies now meet the requirements. The private equity owners of these companies have confirmed that they will ensure that the exceptions and areas for improvement will be addressed when preparing next year's accounts.

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".

One portfolio company, EMI, which conforms with the Guidelines on a voluntary basis, has chosen to 'explain' rather than 'comply' and has not made their accounts available this year. Their explanation for not making their accounts available is that Terra Firma, the private equity firm that owns EMI, are in ongoing discussions with EMI's lender. The full explanation is contained on the EMI website.

### **Private equity firm disclosures**

The Group has reviewed conformity with the Guidelines in respect of the disclosures required by private equity firms themselves, either in their annual reports or alternatively directly on their websites.

The review found that all firms, both required and voluntary, met all the requirements without exception. Therefore all 34 private equity firms covered by the Guidelines are in full conformity with the Guidelines in respect of the disclosures required. This is a significant improvement in conformity from last year when it was found that only approximately 50% of private equity firms met all the requirements without exceptions. This improvement demonstrates the firms' collective and continuing commitment to address weaknesses in their disclosure where they have been identified.

### **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 recommended that the BVCA should commission research into the trading performance of portfolio companies and attribution analysis in respect of exits and publish the findings. Ernst & Young were commissioned to conduct this research and the first BVCA Annual Report on the Performance of Portfolio Companies was published in January 2009.

Ernst & Young were commissioned again this year to undertake the same research. All private equity firms meeting the criteria complied with the request to provide the detailed information on the performance of their portfolio companies. This year's annual report on performance therefore covers all portfolio companies that meet the expanded definition of a 'portfolio company' under the change to the Guidelines introduced in Spring 2009. For the period reviewed this increased the sample size from 28 portfolio companies reported on last year to 47 portfolio companies this year. The 47 portfolio companies covered by Ernst & Young's report were acquired for an aggregate enterprise value of £82bn and employ 353,000 people. The report shows that the portfolio companies have grown revenue, profits and productivity under private equity ownership. There were no completed exits of Walker portfolio companies in 2009. The report is largely based on data up to 31 December 2008 and therefore does not reflect the full impact of the significant changes in the economic environment.

The report can be found on the BVCA website [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. Following the expansion of the criteria announced in the Group's spring update report, the Group together with the BVCA, are continuing their consultation to determine whether the enterprise value threshold should be lowered to £350 million (£210 million for public to private transactions). It is anticipated that this consultation will be completed by 31 December 2009 and the Group will announce their recommendations in early 2010.

## 2

## OVERVIEW OF THE GUIDELINES

In February 2007 the British Private Equity and Venture Capital Association (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 November 2007 with the publication of the Guidelines for Disclosure and Transparency in Private Equity.

The requirements and recommendations of the Guidelines are reproduced at 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 portfolio 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 portfolio 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 £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 was 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.

The above definition of a portfolio company reflects the change to the criteria recommended by the Group in the 2009 spring update report and introduced with immediate effect.

### 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.

- 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.

The full detailed requirements for portfolio company disclosure can be found at Appendix 3.

Additionally, portfolio companies should publish a summary mid-year update no later than three months after mid-year giving a brief account of major developments in the company and should provide data to the BVCA in support of its enhanced role in data collection, processing and analysis.

## 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.
- 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.
- 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.
- 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

There continues to be a high level of commitment to the Guidelines from the private equity industry. In particular, the disclosures made by the private equity firms themselves have improved significantly and all private equity firms covered by the Guidelines have met all the requirements without exception.

A substantial majority of the portfolio companies reviewed this year made good or acceptable disclosures with only a limited number of exceptions. Overall, the quality of the disclosures made by the sample of portfolio companies reviewed this year is similar to the quality of disclosure found in last year's review.

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

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

#### Private equity firms

All private equity firms that meet the criteria have conformed with the Guidelines. Thirty four private equity firms are covered by the Guidelines this year, which compares to 32 firms which were covered last year.

Within this population, two "private equity-like" firms not strictly covered by the Guidelines, Arcapita and Dubai International Capital, have continued to conform on a voluntary basis. Two non BVCA members have also continued to participate on a voluntary basis, Macquarie and the French private equity firm PAI Partners. The Group are continuing to discuss voluntary participation with other "private equity-like" firms and sovereign wealth funds.

#### Portfolio companies

A total of 60 portfolio companies are covered by the Guidelines this year. Of this number, 45 strictly met the criteria set out in the Guidelines and 15 complied on a voluntary basis.

This compares to a total population of 54 portfolio companies last year, 27 of which strictly met the criteria and 27 that complied on a voluntary basis. The increase in the number of portfolio companies covered by the Guidelines this year is a consequence of the change to the criteria recommended by the Group in April 2009, which was fully adopted by all the firms that met the revised criteria.

### 3.4 Review of disclosure by portfolio companies

#### Overview of findings

Overall the Group considers that all 32 companies reviewed by the Group this year have met the Guidelines' enhanced disclosure requirements.

Initially five of the companies reviewed, including two of those being re-reviewed, were assessed by the Group as not having met the Guidelines' enhanced disclosure requirements to a satisfactory degree. After discussion between the Group and the private equity owners of the portfolio companies concerned, the companies included supplemental reports on their websites addressing the missing disclosures. As a consequence of the additional disclosures provided, all five companies now meet the requirements. The private equity owners of these companies have confirmed that they will ensure that the exceptions and areas for improvement will be addressed when preparing next year's accounts.

PwC perform a similar review of the standard of disclosure for FTSE 350 companies. Based on this review they have assessed that on balance, the standard of disclosure made by the portfolio companies covered by the guidelines and reviewed this year is broadly consistent with the average standard of disclosure within the FTSE 350.

It is recognised that the efforts made by the private equity industry so far are encouraging, but improvement in some areas is possible. The Group sees its role not only as assessing compliance with the Guidelines but also in encouraging the industry to progressively improve levels of transparency. With this in mind PwC have been commissioned by the Group to produce guidance on best practice in conforming with the Guidelines. This guidance will include an analysis of the detailed requirements and a summary of best practice, using examples from the reviews conducted over the last two years. The guidance will be made available in early 2010.

As last year, the Group will also be writing individually to the private equity firm owners of all the portfolio companies reviewed this year, setting out the findings of this year's review and making recommendations for improvements to the disclosures for next year.

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".

One portfolio company, EMI, which conforms with the Guidelines on a voluntary basis, has chosen to 'explain' rather than 'comply' and has not made their accounts available this year. Their explanation for not making their accounts available is that Terra Firma, the private equity firm that owns EMI, are in ongoing discussions with EMI's lender. The full explanation is contained on the EMI website.

#### 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 financial statements) should be placed on the website no more than three months after mid-year.

The Group, assisted by PwC, reviewed the accounts for a sample of 32 portfolio companies to assess the extent of conformity with the enhanced disclosure requirements for the annual report and accounts. Out of the 32 accounts reviewed this year, 25 were reviewed for the first time and seven were re-reviewed as a consequence of being reviewed last year and being found to have inadequate disclosures.

The Group, assisted by PwC, has therefore now reviewed over 80% of the current total population of portfolio companies over the two years that they have been reviewing disclosures on behalf of the Group.

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.
- 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. The Enhanced Business Review was required for listed companies for the first time for 31 December 2008 year-ends and as a consequence there were very few examples available when the portfolio company accounts were being prepared.

A number of the exceptions identified in the detailed review of compliance that follows were subsequently addressed by the five portfolio companies discussed above including supplemental reports on their websites. The portfolio companies concerned have committed to include these disclosures in their accounts next year as required by the Guidelines.

## WALKER GUIDELINE SPECIFIC DISCLOSURES

### Identity of the private equity firm

#### *Requirement*

**"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 to disclose the name of the private equity firm was met by all but two of the companies reviewed. Nine companies went further than the basic requirement and also disclosed the name of the managed fund within the private equity house as well as that of the private equity house itself.

### 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**

There were ten exceptions to this requirement. Of the companies that did comply, eight companies included full biographies for each director, including areas of expertise, similar to the reporting format adopted by public companies and therefore went further than the requirements. Other companies that complied used either a table identifying directors appointed by the private equity firm or alternatively included a footnote.

## **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 financial statements.”**

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 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.

### **Financial position at year-end**

This requirement was one of the most successfully met by the portfolio companies reviewed, with 24 companies having good disclosure in this area. However, not all companies reconciled the non-GAAP measures they had used (for example net debt and free cash flow) to the statutory numbers included within the financial statements. The best examples of disclosure included proforma information to enable meaningful comparatives to be provided. No exceptions were identified.

### **Financial risks**

All but two of the companies reviewed 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 quality of disclosure within this area varied considerably. Eight companies were considered to have gone further than the requirements and two companies were assessed as only barely meeting the requirements.

## **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.
- 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**

There were only three exceptions identified from the sample of companies reviewed. However, the standard of disclosures varied, with only five companies using the description of strategy to underpin their report and using consistent terminology throughout.

**Market environment**

There were only two exceptions to this requirement. Six companies provided a good, detailed analysis of the market environment in which they operated, going further than the requirements.

**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**

There was good disclosure of the principle risks and uncertainties in the sample of companies reviewed with six companies going further than the requirements. However, for a small number of companies the risks had to be inferred from the other information provided, rather than being explicitly identified. There was only one exception to this requirement.

**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 KPIs. 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**

All companies disclosed financial KPIs and there were no exceptions to this requirement. Three companies clearly aligned their KPIs with their strategy and explained the purposes of the KPIs identified. These three companies were assessed as going further than the requirements. Three companies were assessed as barely meeting this requirement.

### *Non financial key performance indicators*

Only three companies failed to provide non financial KPIs. In general, the utility companies reviewed within the sample provided good examples of disclosure of non financial KPIs due to the regulated nature of their businesses. There were four examples of disclosure which went further than the Guidelines. This remains an area for improvement, particularly for companies who identified operational strategies and risks but did not identify corresponding KPIs.

### *Enhanced Business Review*

The Enhanced Business Review was required for listed companies for the first time for 31 December 2008 year-ends. Therefore, when the portfolio companies were preparing their accounts there would have been few examples available.

### **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*

There was only one company that did not meet this requirement. Generally, the content of the annual reports reviewed was historical, providing a review of the current year’s performance and lacking a discussion on future performance. Only a small number of the sample of companies reviewed provided quantitative information to support their analysis.

### **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*

All but eight of the companies reviewed provided adequate disclosure about environmental matters affecting the company. A number of the companies published separate Corporate and Social Responsibility reports which also covered environmental issues. Where the accounts included a specific reference to these reports they were included in the review.

### **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*

All the companies reviewed were assessed as meeting this requirement. Four companies went beyond the requirements of the Guidelines and provided additional disclosure.

### **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*

There were ten exceptions to this requirement. In addition, the disclosures made by a number of the sample reviewed were assessed as barely meeting the requirement. There were few examples of company specific discussion or information that was relevant to the strategy. This remains an area where there is currently limited guidance or examples of best practice and the Group together with the BVCA will be working to help improve disclosure in this area next year.

### **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*

Where information about contractual or other arrangements was provided, it tended to be scattered throughout the report, rather than being provided under a specific heading. There were ten exceptions to this requirement. This remains an area where the quality of disclosures could be improved.

## **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. Firms continued to adopt both these approaches broadly evenly amongst the population, with slightly more opting for an annual review.

### **Findings**

Following the feedback provided to firms following last year's report, all 34 private equity firms covered by the Guidelines are now in full conformity with each of the individual requirements. This is a significant improvement in conformity from last year when it was found that only approximately 50% of private equity firms met all the requirements without exceptions. This improvement demonstrates the firms continuing commitment to address weaknesses in their disclosure where they have been identified.

There remains a range of approaches to conformity, with a small number of firms making the minimum required disclosures whilst a number went significantly further than the requirements. The better examples of disclosure included case studies of realised investments, details of the firm's approach to corporate and social responsibility issues, as well as detailed information 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**

- All private equity firms owning portfolio companies that meet the criteria have cooperated fully 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.
- Where portfolio companies have undergone significant strategic change the private equity firms ensured timely and effective communication.

### **Performance of portfolio companies**

The Guidelines recommended that the BVCA should commission research into the trading performance of portfolio companies and attribution analysis in respect of exits and publish the findings. Ernst & Young were commissioned to conduct this research and the first BVCA Annual Report on the Performance of Portfolio Companies was published in January 2009.

Ernst & Young were commissioned again this year to undertake the same research. All private equity firms meeting the criteria complied with the request to provide the detailed information on the performance of their portfolio companies. This year's separate annual report on performance therefore covers all portfolio companies that meet the expanded definition of a 'portfolio company' under the change to the Guidelines introduced in Spring 2009. For the period reviewed this increased the sample size from 28 portfolio companies reported on last year to 47 portfolio companies this year. The 47 portfolio companies covered by Ernst & Young's report were acquired

for an aggregate enterprise value of £82bn and employ 353,000 people. The report shows that the portfolio companies have grown revenue, profits and productivity under private equity ownership. There were no completed exits of Walker portfolio companies in 2009. The report is largely based on data up to 31 December 2008 and therefore does not reflect the full impact of the significant changes in the economic environment.

The report can be found on the BVCA website [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 has established a Research Advisory Board to guide its research activities and 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 agreed to comply with the Guidelines:**

3i Group plc
Advent International plc
Apax Partners
Arcapita #*
Bain Capital Ltd
Bosif Investments (Bank of Scotland)
BC Partners
Blackstone Group International Ltd
Bridgepoint
Candover
CCMP Capital Advisors (UK) LLP
Charterhouse Capital Partners LLP
Cinven
Clayton Dubilier & Rice Ltd
Close Brothers Private Equity LLP
CVC Capital Partners Ltd
Doughty Hanson & Co Ltd
Dubai International Capital #
Duke Street Capital
GS Capital Partners
Hellman and Friedman *
Henderson
KKR & Co Ltd
Lion Capital
Macquarie *
Montagu Private Equity LLP
PAI Partners *
Permira Advisers LLP
Providence Equity LLP
Terra Firma Capital Partners Limited
The Carlyle Group
TPG Capital LLP
Vision Capital Ltd
Warburg Pincus

\* Not a member of the BVCA

# Private equity-like entity

## A2

## APPENDIX 2: PORTFOLIO COMPANIES

The following portfolio companies either meet 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
Arqiva	Macquarie
Associated British Ports	GS Capital Partners
Baxi *	BC Partners
Biffa *	Montagu Private Equity
Birds Eye Iglo	Permira
Brakes Group	Bain Capital
British Vita #	TPG
CenterParcs *	Blackstone
Domestic and General Group	Advent
Doncasters *	DIC
DX Group *	Candover
Emap (as part of Guardian Media Group) *	Apax
Enterprise	3i
Equiniti *	Advent
Expro *	GS Capital Partners
Findus Group (Foodvest)	Lion Capital
Fitness First	BC Partners
Gala Coral *	Cinven / Candover / Permira
Gondola Holdings *	Cinven
John Laing *	Henderson
Merlin Entertainments Group	Blackstone/ Dubai International 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
Partnerships in Care Limited	Cinven
Phones4U *	Providence

PHS	Charterhouse
QMH *	GS Capital Partners
Spire Healthcare (formerly BUPA hospitals)	Cinven
Thames Water	Macquarie
Trader Media (as part of Guardian Media Group) *	Apax
Travelex	Apax
Travelodge *	Dubai International Capital
United Biscuits	Blackstone / PAI
Viridian Group	Arcapita / Electricinvest
Wales & West Utilities *	Macquarie
Weetabix *	Lion Capital

### Voluntary portfolio companies

PORTFOLIO COMPANY	OWNERS
2e2 *	Duke Street
Simple Health & Beauty (Accantia) *	Duke Street
Autobahn Tank & Rast Holding	Terra Firma
AWAS *	Terra Firma
Deutsche Annington Immobilien *	Terra Firma
EMI Group	Terra Firma
General Healthcare Group	Apax
HIT Entertainment	Apax
Infinis Ltd *	Terra Firma
Iris *	Hellman and Friedman
Kellen Group (Phoenix Natural Gas)	Terra Firma
Kwik-Fit Group	PAI
Keepmoat *	HBOS
Talaris *	Carlyle
Tragus	Blackstone

\* Accounts reviewed this year

# Committed to meet disclosure requirements from December 2009

### Deletions

- National Grid Wireless has merged with Arqiva
- Somerfield is not included on the list as a consequence of its sale to Co-op
- LINPAC is no longer controlled by Montagu Private Equity and has therefore been removed from the list of required portfolio companies
- IMO Car Wash is no longer controlled by Carlyle and has therefore been removed from the list of voluntary portfolio companies
- Incisive Media is no longer controlled by Apax and has therefore been removed from the list of voluntary portfolio companies
- McCarthy and Stone Group Ltd is no longer controlled by BOSIF Investments and has therefore been removed from the list of voluntary portfolio companies

## 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 April 2009 update report):

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.

### 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 financial statements.
- 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 financial statements) 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 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.

## 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 purposes 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: RECOMMENDATIONS FOR INITIATIVE BY THE INDUSTRY ASSOCIATION

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 purposes 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.

## A5

## APPENDIX 5: EXTRACT FROM COMPANIES ACT, 2006

### 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**  
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