

Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

CONSULTATION ON AMENDMENTS TO THE WALKER GUIDELINES

APRIL 2014

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Invitation for comment

The Guidelines Monitoring Group is inviting comments from interested parties (including private equity firms, portfolio companies, advisers and any other stakeholders) on the proposed revisions to the Guidelines set out Chapter 2 of this consultation document.

Comments are due by 30 June 2014 and this consultation is being administered by the British Private Equity and Venture Capital Association. Comments can be submitted over email to committees@bvca.co.uk or in writing to:

Gurpreet Manku

British Private Equity and Venture Capital Association
Brettenham House, Lancaster Place, London, WC2E 7EN

For any queries or to arrange a meeting to discuss the proposals and your comments in more detail, please contact Gurpreet Manku at 020 7420 1800.

All responses will be treated as confidential.

INTRODUCTION



The Guidelines Monitoring Group (the “Group”) was created in 2007 as an independent body to monitor the private equity industry’s compliance with Sir David Walker’s Guidelines for Disclosure and Transparency in Private Equity (the “Guidelines”). Since then, the industry has embraced and adopted these Guidelines with over eighty portfolio companies currently providing additional disclosure voluntarily.

Last summer we outlined our plan for promoting and developing the Guidelines in light of changing narrative reporting requirements in the UK and European regulatory developments. The Department of Business, Innovation and Skills’ has since implemented regulations that will change the way all companies (including private companies) report by requiring information of strategic importance to be promoted to a separate strategic report that sits alongside the directors’ report. The strategic report will also require approval from the board of directors thereby emphasising its positioning in a company’s narrative reporting.

The Group is consulting on the changes the implementation of The Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (the “Strategic Report Regulations”) will necessitate to the Guidelines. This need has arisen as the Strategic Report Regulations remove the requirement for a business review in the directors’ report – which was the foundation for the enhanced disclosure requirements for portfolio companies covered by the Guidelines – and moves this content to the strategic report. In addition, further information is required on the business model, gender diversity and human rights matters from quoted companies and as the intent of the Guidelines is to mirror the reporting by quoted companies, the Group believes these additions ought to be included. Companies must also set out their strategy clearly; this however is already expected by the Group when implementing the current Guidelines. Section 2 outlines: the changes proposed; the timeframe for implementation (which includes a year’s grace monitoring compliance by quoted companies) and questions we would like interested parties to consider as part of this consultation process.

The Strategic Report Regulations also require information on greenhouse gas emissions to be included in the directors’ report for quoted companies. The Group has concluded that this information does not need to be incorporated in the Guidelines as the amendments should focus on the elements previously contained in the business review. The Group will continue to monitor the implementation of the recommendations arising from the Sharman Panel of Inquiry into going concern and liquidity risks, and assess if amendments are needed in the coming years.

The Group has been monitoring the development of the Alternative Investment Fund Managers Directive (“AIFMD”) and is of the view the Guidelines do not require any changes to incorporate the transparency requirements included in the AIFMD. Therefore, private equity firms and portfolio companies that are covered by the Guidelines are not expected to provide disclosure on any of the applicable additional requirements in the AIFMD if they do not fall within the scope of the AIFMD. Firms that are covered by the AIFMD may find the Guidelines and examples of good practice reporting by portfolio companies as a useful source of guidance but are responsible for taking appropriate advice to ensure they are fully compliant with their obligations. Section 3 explains in more detail how the Guidelines and the AIFMD interact with respect to the disclosures required in annual reports and those required on acquisition of non-listed portfolio companies

Part V of the Guidelines sets out Sir David Walker’s final guidance on the enhanced disclosure obligations placed upon portfolio companies and private equity firms. As there have been a number of changes since 2008, appendix 2 sets out the full text including the current proposed amendments and the amendments that have been implemented since the Guidelines were first issued. As part of this review process, the Group has opted not to reduce the size thresholds that determine whether portfolio companies are within scope.

The Group’s central aim is to improve the quality of narrative reporting in line with good practice seen amongst constituents of the FTSE 350, our chosen benchmark. This aim underlies the decisions made on which amendments to take forward when revising the Guidelines. We have also considered whether to include a specific statement of conformity with the Guidelines in the annual report of the

portfolio company and we believe this proposal should be taken forward as it will contribute to higher standards of transparency in reporting. This is in line with statements expected by directors of listed companies complying with the UK Corporate Governance Code including the new requirement to confirm they consider the annual report to be “fair, balanced and understandable.” The Group expects that this, coupled with the implementation of the Strategic Report Regulations, will further enhance the overall quality and content of annual reports across the FTSE 350.

The Group, along with PwC, will publish an update to the Good Practice Guide this summer to help firms understand what is expected to comply with the amended Guidelines. Some of these requirements are also new for quoted companies and so it will take time to establish common practice and benchmarks for comparison. Over time, the Group expects disclosures to become more relevant and focused setting out what is important to shareholders and stakeholders in the company. There is growing emphasis on the need to better link different elements of the annual report to highlight important relationships and interdependencies and ensure the overall report has a forward looking orientation. Portfolio companies and private equity firms will need to bear this in mind when finalising their disclosures, particularly against the backdrop of improving standards in the FTSE 350.

PROPOSED AMENDMENTS TO NARRATIVE REPORTING REQUIREMENTS FOR PORTFOLIO COMPANIES

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2.1 Background

Part V section 4 of the current Guidelines (content of enhanced disclosure by a portfolio company) requires portfolio companies to comply with section 417 of the Companies Act 2006 which sets out the content of the business review in the directors' report. Unless a company is subject to the small companies' regime, the directors' report must contain a business review and there are enhanced requirements for quoted companies. The Guidelines also introduce specific disclosures for portfolio companies and taken together the requirements, as reviewed by PwC and reported on by the Group, are summarised as follows:

| Guidelines-specific disclosures | |
|--|--|
| <ul style="list-style-type: none"> ■ Identity of private equity firm ■ Details on board composition ■ Financial review – position ■ Financial review – financial risks | |
| Business review disclosures | |
| Applicable to all companies ¹ | Enhanced disclosures normally applicable to quoted companies that are required by the Guidelines |
| <ul style="list-style-type: none"> ■ Fair review of the business – strategy ■ Fair review of the business – market environment ■ Principal risks and uncertainties facing the company ■ Key performance indicators – financial ■ Key performance indicators – non-financial | <ul style="list-style-type: none"> ■ Trends and factors affecting future development, performance or position ■ Environmental matters ■ Employees ■ Social and community issues ■ Essential contractual or other arrangements |

In October 2012, the Department for Business, Innovation and Skills ("BIS") issued draft regulations covering narrative reporting in the UK. These were in response to consultations on Government plans to make narrative reporting clearer and more focussed for investors' needs. The final regulations were published in August 2013 and became effective for accounting periods ending on or after 30 September 2013.

The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 (the "Strategic Report Regulations") **apply to all companies, including private companies**. The Strategic Report Regulations amend the Companies Act 2006 to insert a new chapter on the duty to prepare a strategic report (Chapter 4A, Strategic Report) and removes section s417 on the content of a business review. All companies with the exception of those entitled to the small companies' exemption will need to produce two separate reports - a strategic report and a directors' report – and both will require separate approval from the board of directors.

The strategic report replaces the business review previously included in the directors' report. We are therefore amending Part V section 4 of the Guidelines to incorporate this change so that portfolio

¹ This is applicable to all companies (including private companies) except those eligible for the small companies' exemption. Medium-sized companies are also eligible for an exemption to provide non-financial information.

companies have clarity on the provisions of the Companies Act 2006 they need to comply with. Last summer, we published an outline of the areas included in the Strategic Report Regulations that we were reviewing. Alongside the requirement to prepare a strategic report, we considered whether the following new disclosure requirements applicable to quoted companies should be incorporated in the Guidelines:

- (i) **Information to be included in the strategic report:** the business model, gender diversity and human rights matters. Detail on strategy is also required, however this is an existing requirement in the Guidelines as the Group believes it is relevant to provide a fair review of the business (see table above). The Strategic Report Regulations also removed the requirement to include detail on essential contractual or other arrangements.
- (ii) **Information to be included in the directors' report:** details on greenhouse gas emissions.

The Group has concluded that it is appropriate to extend the enhanced disclosure requirements for portfolio companies (in Part V section 4 of the Guidelines) to incorporate the additional information in point (i) above. This follows the original intention of the Guidelines and Sir David Walker's recommendation to report to the level of quoted companies in respect of the disclosures provided in the business review which is now replaced by the strategic report. The incremental increase in disclosure obligations is being consulted on as part of this consultation process.

We have also been monitoring whether to include a specific statement of conformity with the Guidelines in the annual report of the portfolio company. We believe this proposal should be taken forward as it will contribute to higher standards in reporting and this is set out below in Part V section 4f) of the Guidelines.

The Group has concluded that it is not necessary to extend the enhanced disclosure requirements for portfolio companies to incorporate the additional information in point (ii) above. The Group believes the Guidelines should focus on the elements previously contained in the business review as the intent was to provide more disclosure on the activities of the company and factors that could impact its future development. Portfolio companies may wish to include the information on greenhouse gas emissions in their annual reports, for example in the section on environmental matters in the strategic report, if they wish and this will be dependent on the nature of their activities.

The following sections outline:

- the new requirements and how they compare to the existing Guidelines (section 2.2.1);
- initial expectations of what companies will need to disclose to comply with the new requirements (section 2.2.2);
- detail on when portfolio companies are expected to comply with the requirements (section 2.3); and
- the areas we are seeking views on as part of this consultation (section 2.4).

2.2 Amendments proposed and a comparison to current requirements

2.2.1. Comparison

The table below sets out the existing requirements in Part V section 4 of the Guidelines as they relate to Guidelines-specific disclosures and the information that was required in section 417 of the Companies Act 2006. This is compared to the equivalent requirements in the Strategic Report Regulations and we have highlighted which areas will be new for portfolio companies covered by the Guidelines as a consequence. We have also highlighted whether this information should be included in the strategic report or directors' report. Information in the directors' report can be included in the strategic report depending on its importance to the company; however this must be clearly linked.

Portfolio companies will need to review the information they need to incorporate by reference in the directors' report to ensure they comply with the requirements required by law, for example the need to provide information on "the likely future developments of the business." Portfolio companies should confirm this with their auditors before the annual report is approved.

| Existing requirement | Amended requirement | A new requirement for Walker Companies? | Part of the Directors' Report or Strategic Report? |
|--|---|---|--|
| Walker Guidelines Part C paragraph 4 | | | |
| 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. | | No change | See below for each individual requirement |
| Walker Guidelines Part C paragraph 4a) | | | |
| 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. | | No change | Directors' report |
| Walker Guidelines Part C paragraph 4b) | | | |
| 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. | | No change | Directors' report |
| Walker Guidelines Part C paragraph 4c) | | | |
| 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) | The report should include a strategic report that substantially conforms to the provisions of Chapter 4A of Part 15 of the Companies Act 2006 including sub-sections 7 and 8 of section 414C (which are ordinarily applicable only to quoted companies) | Yes | Strategic report |
| Ref | Ref | | |
| s417(1) Unless the company is subject to the small companies' regime, the directors' report must contain a business review. | s414A(1) The directors of a company must prepare a strategic report for each financial year of the company. | Yes, a separate report is required | Strategic report |
| s417(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 (duty to promote the success of the company). | s414C(1) The purpose of the strategic report is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company). | The purpose remains the same though there are new requirements as set out below | Strategic report |
| s417(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. | s414C(2) The strategic report must contain— a) a fair review of the company's business, and b) a description of the principal risks and uncertainties facing the company. | No | Strategic report |

| Existing requirement | Amended requirement | A new requirement for Walker Companies? | Part of the Directors' Report or Strategic Report? |
|----------------------|--|--|--|
| s417(4) | <p>The review required is a balanced and comprehensive analysis of—</p> <p>a) the development and performance of the company's business during the financial year, and</p> <p>b) the position of the company's business at the end of that year, consistent with the size and complexity of the business.</p> | No | Strategic report |
| s417(5) | <p>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—</p> <p>a) the main trends and factors likely to affect the future development, performance and position of the company's business; and</p> <p>b) information about—</p> <p>i. environmental matters (including the impact of the company's business on the environment),</p> <p>ii. the company's employees, and</p> <p>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</p> <p>c) subject to subsection (1), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.</p> <p>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.</p> | <p>The majority of this section is the same as the original Guidelines. However the section highlighted on human rights is a new requirement. The section on contractual and other arrangements has been removed and should be considered as part of the business model and assessment of principal risks.</p> | Strategic report |
| s414C(3) | <p>The review required is a balanced and comprehensive analysis of—</p> <p>a) the development and performance of the company's business during the financial year, and</p> <p>b) the position of the company's business at the end of that year, consistent with the size and complexity of the business.</p> | | |
| s414C(7) | <p>In the case of a quoted company the strategic report must, to the extent necessary for an understanding of the development, performance or position of the company's business, include—</p> <p>a) the main trends and factors likely to affect the future development, performance and position of the company's business, and</p> <p>b) information about—</p> <p>i. environmental matters (including the impact of the company's business on the environment),</p> <p>ii. the company's employees, and</p> <p>iii. social, community and human rights issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies.</p> <p>If the report does not contain information of each kind mentioned in paragraphs b)(i), (ii) and (iii), it must state which of those kinds of information it does not contain.</p> | | |
| s414C(8) | <p>In the case of a quoted company the strategic report must include—</p> <p>a) a description of the company's strategy,</p> <p>b) a description of the company's business model,</p> <p>c) a breakdown showing at the end of the financial year—</p> <p>i. the number of persons of each sex who were directors of the company;</p> | Yes – all the disclosure requirements for strategy, business model and gender diversity are new, however please see section 2.2.2 below on existing expectations regarding disclosures on strategy | Strategic report |

| | | | | | |
|-----------|---|--|--|--|------------------|
| | | | ii. the number of persons of each sex who were senior managers of the company (other than persons falling within sub-paragraph (i)); and iii. the number of persons of each sex who were employees of the company. | | |
| | | | In subsection (8), “senior manager” means a person who— a) has responsibility for planning, directing or controlling the activities of the company, or a strategically significant part of the company, and b) is an employee of the company. | | |
| | | | In relation to a group strategic report— a) the reference to the company in subsection (8)(c)(i) is to the parent company; and b) the breakdown required by subsection (8)(c)(ii) must include the number of persons of each sex who were the directors of the undertakings included in the consolidation. | | |
| s414C(9) | | | | No | Strategic report |
| s414C(10) | | | | No | Strategic report |
| s417(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. | | 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. | | |
| s417(7) | “Key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively. 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. | | In subsection (4), “key performance indicators” means factors by reference to which the development, performance or position of the company’s business can be measured effectively. Where a company qualifies as medium-sized in relation to a financial year (see sections 465 to 467), the review for the year need not comply with the requirements of subsection (4) [of s414C] so far as they relate to non-financial information. | No | Strategic report |
| | | | The strategic report may also contain such of the matters otherwise required by regulations made under section 416(4) to be disclosed in the directors’ report as the directors consider are of strategic importance to the company. | No, this allows for the inclusion of disclosures included within the directors’ report to be moved to the strategic report | Strategic report |

| Existing requirement | Amended requirement | A new requirement for Walker Companies? | Part of the Directors' Report or Strategic Report? |
|---|---|--|---|
| s417(8) | The review must, where appropriate, include references to, and additional explanations of, amounts included in the company's annual accounts. | No | Strategic report |
| s417(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. | No, the exception relates to the disclosures on gender diversity | Strategic report |
| s417(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. | No | Strategic report |
| s417(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. | N/A | N/A |
| Walker Guidelines Part C paragraph 4d) | | | |
| 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. | | No change | Strategic report |
| Walker Guidelines Part C paragraph 4e) | | | |
| To the extent that the guidelines at 4. a) to d) 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. | | Extended to include 4. a) and d) | Strategic report & Directors' report as applicable, & company website |
| Walker Guidelines Part C paragraph 4f) | | | |
| The report should include a statement by the directors of the portfolio company confirming compliance with the Guidelines or setting out explanations for areas of non-compliance. | | New statement | Strategic report |

2.2.2. The Group's expectations on compliance

Compliance with the Guidelines is monitored by reference to the FTSE 350 and therefore the quality of reporting seen across this benchmark. As some of these requirements are new for quoted companies too, it will take time to establish themes in reporting seen and indeed what constitutes "best practice". Over time, the Group expects disclosures to become more relevant and focused setting out what is important to shareholders and stakeholders in the company. There is growing emphasis on the need to better link different elements of the annual reports to highlight important relationships and interdependencies. Portfolio companies and private equity firms will need to bear this in mind when finalising their disclosures, particularly against the improvement in standards in the FTSE 350.

The Group is of the view that the quality of disclosure is only going to improve further in the coming years as many companies are using the implementation of the Strategic Report Regulations as an opportunity to rethink the structure of their annual reports. In addition to this, directors of companies that are required to comply with the UK Corporate Governance Code (the "Code") (listed companies and those that have chosen to voluntarily), will need to make a formal statement that they consider the annual report to be "fair, balanced and understandable." This will further enhance the overall quality and content of annual reports across the FTSE 350.

The Financial Reporting Council ("FRC") has issued draft guidance on the strategic report (the "FRC draft guidance") which the Group recommends as essential reading to assist companies when they are compiling their reports. Companies should also review publications from audit firms that set out emerging practice by quoted companies as the reporting season unfolds. The Group, along with PwC, will publish an update to the Good Practice Guide this summer to help firms understand what is expected to comply with the amended Guidelines. Summarised below are initial observations on how companies could comply with the new requirements and these will be further expanded on as themes emerge based on how the FTSE 350 is implementing the changes.

Strategy

The strategy of a company should clearly articulate how the business intends to achieve its objectives. This should underpin the reporting and provide a context for the activities and performance of the company. Strategic statements set in isolation from the rest of the company reporting can appear as hollow statements of intent. A clear articulation of the company's strategy will explain the strategic themes, targets, time frames and add further clarity to the reporting.

Business model

The business model should build on from the strategy, identifying what the company does and how value is created. It should explain the key capabilities, resources and relationships that the company uses to create and sustain value. Where businesses operate distinct business models within divisions, further disclosure may be required to provide meaningful information that aids understanding of how a company operates.

Gender diversity

The company's overall policy in relation to diversity should be stated in general. The following specific metrics on gender diversity should be considered at the end of the financial year:

- The number of people of each sex who were directors of the company.
- The number of people of each sex who were senior managers of the company (other than those people already captured in the first bullet point). A senior manager being defined as an employee of the company who has responsibility for planning, directing or controlling the activities of the company, or a strategically significant part of the company.
- The number of people of each sex who were employees of the company.

Human rights

A company should disclose its policy on human rights matters and how the company actively manages the implications of this policy and related risks and how this is assessed. Relative to how the company conducts its business, disclosures may cover the geographies in which the business has operations, sourcing arrangements, manufacturing processes, and other related areas to the extent they impact the development, performance, position and future prospects of the company. It is likely disclosure would include a competency led statement on compliance with human rights law and issues.

Companies can opt not to include the information on environmental matters, the company's employees, social, community and human rights issues if that information is not strategically important. However,

the report must state what information is omitted and in practice we rarely see this information being omitted. However, we note that some companies are opting to exclude information on human rights where it is not strategically important and this has been clearly stated.

Incorporating the proposed amendments, the Guidelines would be summarised as follows:

| Guidelines-specific disclosures | |
|---|---|
| <ul style="list-style-type: none"> ■ Identity of private equity firm ■ Details on board composition ■ Financial review – position ■ Financial review – financial risks | |
| Strategic report disclosures | |
| Applicable to all companies² | Enhanced disclosures normally applicable to quoted companies that are required by the Guidelines |
| <ul style="list-style-type: none"> ■ Balanced and comprehensive analysis of development and performance during the year and position at the year end ■ Principal risks and uncertainties facing the company ■ Key performance indicators – financial ■ Key performance indicators – non-financial including environmental matters and employees | <ul style="list-style-type: none"> ■ Strategy ■ Business model ■ Trends and factors affecting future development, performance or position ■ Environmental matters ■ Employees ■ Social, community and human rights issues ■ Gender diversity information |

2.3 Timeframe for implementation

The proposed project plan for implementing the proposed amendments is set out below. The Group will monitor compliance by quoted companies for a year and therefore the proposed changes will impact portfolio companies with accounting periods ending on or after 30 September 2014.

2.3.1. The scope of the Group's review in 2014

The extended requirements applicable to quoted companies in the strategic report (the business model, gender diversity and human rights matters) will therefore not apply to portfolio companies preparing annual reports that will be reviewed by the Group for its seventh report. The seventh report will be published in December 2014 and will cover accounting periods ending up to and including 30 April 2014. For those companies with accounting periods ending on or after 30 September 2013, a strategic report is required under company law and the Group will review this report to assess compliance with the current Guidelines. Portfolio companies may voluntarily include the additional information if they wish and the Group will provide feedback.

2.3.2. The scope of the Group's review in 2015

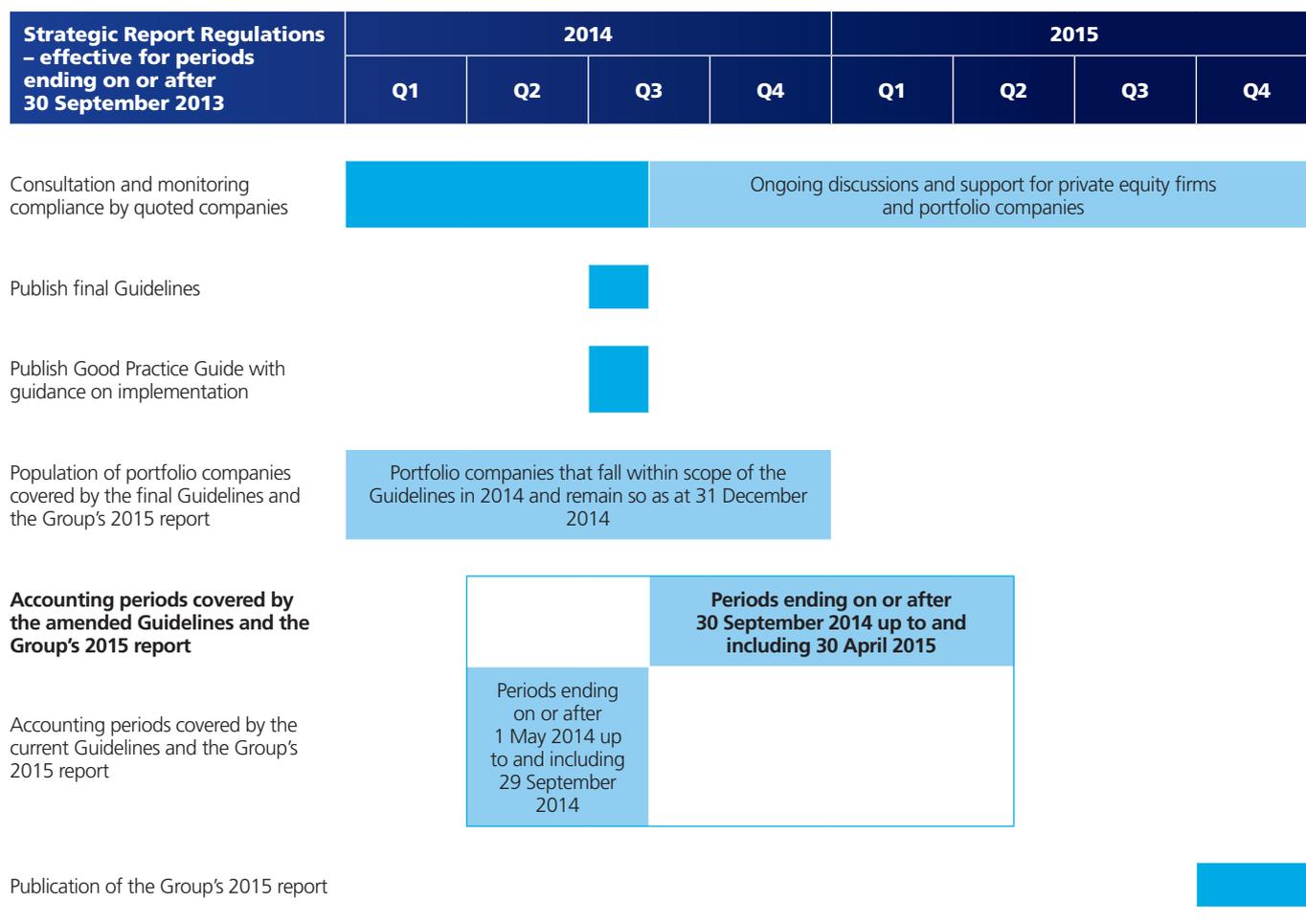
The Group will report on the compliance of portfolio companies with the amended Guidelines in December 2015 and this will cover portfolio companies that fall within the scope of the Guidelines between 1 January 2014 and 31 December 2014 and the portfolio company must meet the threshold criteria set out in Part V of the Guidelines (see appendix 2 below) as at 31 December 2014.

The Group will monitor compliance of the annual reports of covered portfolio companies with accounting years ending up to and including 30 April 2015. This means that portfolio companies with accounting years ending on 1 May 2014 and up to 29 September 2014 will not be required to comply with the amended Guidelines but the Group would encourage portfolio companies to consider doing so.

As explained above, the Group, along with its advisor PwC, will publish a guide on how quoted companies are implementing the changes. This will shape the Group's expectations on how compliance should be measured.

The Group intends to be flexible in its approach to implementation and will support portfolio companies complying with the amended requirements in the first year of their application. The Group will discuss individual cases with portfolio companies and private equity firms where a year's grace may be warranted.

² This is applicable to all companies (including private companies) except those eligible for the small companies' exemption. Medium-sized companies are also eligible for an exemption to provide non-financial information.



2.4 Consultation questions

1. Do you agree with the proposed amendments to Part V Section 4 of the Guidelines relating to the enhanced reporting requirements for portfolio companies? If not, please set out your specific concerns and suggestions for an alternative approach.
2. Do you agree the proposed changes to the reporting requirements for Walker portfolio companies appropriately implement The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 in respect of the requirements relating to the Strategic Report?
3. Do you agree with the Group's approach to implementing the requirements concerning greenhouse gas emissions in the directors' report? If not, please provide suggestions for an alternative approach.
4. Do you agree with the timeframe proposed for implementation of the amendments to the Guidelines?

3

THE GUIDELINES AND INTERACTION WITH THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

The Alternative Investment Fund Managers Directive (“AIFMD” or the “Directive”) came into force across the European Union on 22 July 2013. The Directive sets out how Alternative Investment Fund Managers (“AIFMs”) will be regulated and covers a number of areas including the capital they must hold, operating conditions and transparency requirements. The Directive is far reaching and, subject to threshold conditions and ‘grandfathering’ provisions, applies (in whole or in part) to: all EU AIFMs that manage Alternative Investment Funds (“AIFs”) and all non-EU AIFMs that market AIFs to investors in the EU.

3.1 Overview

The transparency requirements set out what must be disclosed by AIFMs to investors in AIFs and regulators. There are also further disclosure obligations for AIFMs where the AIFs they manage hold controlling interests in EU companies in the so called “portfolio company” provisions. These have been implemented into UK law in Part 5 of The Alternative Investment Fund Managers Regulations 2013 (the “AIFM Regulations”). The provisions include reporting obligations to regulators as AIFMs build up stakes in non-listed companies and requirements to prevent “asset-stripping” of companies. These requirements apply to EU AIFMs and also to non-EU AIFMs who market to EU investors. Further, local jurisdictions have the option of “gold plating” these requirements so managers will need to understand the requirements in each country. The rules do not apply to special purpose vehicles established to buy, hold or administer real estate, or to small or medium-sized enterprises. They also do not apply to non-EU AIFMs who do not market their funds in the EU, nor to other types of investor (such as sovereign wealth funds).

The Group has been monitoring the development of European regulation and has concluded the Guidelines do not require any further amendment to incorporate the transparency requirements in the AIFMD. Having performed a gap assessment, the Group was of the view that the Guidelines (including the amendments set out in section 2) include the information required under the AIFMD in respect of disclosure in the annual reports of portfolio companies except for details on transactions in own shares. The Group expects this information to be included in the financial statements of the portfolio company where significant and has chosen not to incorporate this disclosure requirement as it was removed by BIS from the directors’ report in the Strategic Report Regulations. This approach is in line with the Guidelines which do not prescribe disclosures that go beyond those required of quoted companies.

The disclosures expected by AIFMs on acquisition of control of portfolio companies under the AIFMD are more prescriptive than those set out in Part V Section 10 of the Guidelines. The Group has decided not to amend the Guidelines in respect of these specific requirements as they are still within the spirit of the Guidelines for this particular area. Further, the non-inclusion of these additional areas will not affect the Group’s objective of ensuring that private equity firms and portfolio companies covered by the Guidelines report to at least the standard seen in the FTSE 350.

In summary, private equity firms and portfolio companies that are covered by the Guidelines are not expected to provide disclosure on any of the applicable additional requirements in the AIFMD if they do not fall within the scope of the AIFMD. Firms that are covered by the AIFMD may find the Guidelines and examples of good practice reporting by portfolio companies as a useful source of guidance but are responsible for taking appropriate advice to ensure they are fully compliant with their obligations. Part V of the Guidelines has been amended (as set out in appendix 2) to explain the interaction with the AIFMD.

We have outlined below the Directive’s requirements from a narrative reporting perspective only and how these interact with the Guidelines. The requirements apply to non-listed companies with registered offices in the EU.

3.2 Annual report disclosures

The table below summarises the additional disclosure required under the AIFMD in annual reports where an AIF exercises control of a non-listed company and examples of how these interact with the Guidelines.

| AIFMD requirements – annual report disclosures <i>Regulation 42 of the AIFM Regulations (Annual report of AIFs exercising control of non-listed companies)</i> | Guidelines requirements <i>Part V Sections 4 and 5 of the Guidelines (Guidelines for enhanced disclosure by portfolio companies and private equity firms)</i> |
|--|--|
| <p>The following disclosures are required about each non-listed company over which an AIF individually or jointly has control. They can be included in the annual report of the AIF and/or the non-listed company.</p> | <p>The following disclosures are required to be included in the annual report of the portfolio company and not the private equity fund.</p> |
| <ul style="list-style-type: none"> ■ A fair review of the development of the company's business representing the situation at the end of the period covered by the annual report; | <p>Part V section 4 requires portfolio companies to prepare a strategic report which includes provisions in the Companies Act 2006 normally applicable to quoted companies. The strategic report requirements set out in s414C(2) and s414C(3) of the Companies Act 2006 will assist firms to comply with this requirement. They require "a fair review of the company's business" and a "balanced and comprehensive analysis of the development and performance of the company's business" during the financial year and the position at the end of that year. s414C(4) also requires the disclosure of financial and non-financial key performance indicators to support the analysis.</p> |
| <ul style="list-style-type: none"> ■ Any important events that have occurred since the end of the financial year; | <p>The Group expects this information to be included to comply with the requirements of the strategic report as the report should have forward looking orientation. Further, this information is expected to be disclosed under UK and international accounting standards.</p> |
| <ul style="list-style-type: none"> ■ The company's likely future development; and | <p>The strategic report requirements set out in s414C(7) of the Companies Act 2006 will assist firms to comply with this requirement. It requires information on "the main trends and factors likely to affect the future development, performance and position of the company's business."</p> |
| <ul style="list-style-type: none"> ■ Details of any acquisitions or disposals of own shares. | <p>The Group expects this information to be included in the financial statements of the portfolio company where significant and has chosen not to incorporate this disclosure requirement as it was removed by BIS from the directors' report in the Strategic Report Regulations as it was not considered a significant disclosure. This approach is in line with the Guidelines which do not prescribe disclosures that go beyond those required of quoted companies.</p> |
| <p>The disclosures must be made within six months of the year-end of the AIF.</p> | <p>Part V section 5b) of the Guidelines requires the annual report of the portfolio company to be made available no more than 6 months after the company year end. Where the year end of the portfolio company and the AIF are the same then the AIFMD requirement is likely to be fulfilled. Where the year end of the portfolio company differs to that of the AIF then firms may need to amend the timing of reporting of the portfolio company accordingly.</p> |
| <p>If the information is included in the AIF's annual report then the AIFM must use best efforts to ensure the board of the company makes the information available to all employee representatives or (where there are none) to the company's employees directly.</p> | <p>Part V section 5a) of the Guidelines requires the annual report of the portfolio company to be readily accessible on the company website. This ensures that employees and other stakeholders are able to access this information publicly.</p> |

3.3 Disclosures required on acquisition of control

The table below summarises the additional disclosure required under the AIFMD when control of a non-listed company is acquired and examples of how these interact with the Guidelines.

| AIFMD requirements – disclosures on acquisition of control <i>Regulation 39 of the AIFM Regulations (Disclosure in case of acquisition of control)</i> | Guidelines requirements <i>Part V Sections 4, 5, 7 and 10 of the Guidelines (Guidelines for enhanced disclosure by portfolio companies and private equity firms)</i> |
|---|--|
| <p>When control is acquired, the AIFM must disclose its intentions to the regulator, the company and its shareholders about the future of the business and likely repercussions on employment by the company and material change in the conditions of employment.</p> | <p>Part V section 10 of the Guidelines sets out the responsibilities of the private equity firm at a time of significant strategic change. It requires a commitment 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.” Although the precise wording is not the same, the AIFMD requirements are in the spirit of what is intended by the Guidelines. The Guidelines, however, do not include the obligation to disclose information to regulators.</p> |
| <p>Other areas where disclosure is required:</p> | |
| <ul style="list-style-type: none"> ■ The identity of the AIFM(s) with control. | <p>Part V sections 4a) and 4b) of the Guidelines require disclosure of the fund(s) that own the company, details on executives or advisers of the private equity firm that have oversight of the company and details on board composition, identifying those directors from the private equity firm.</p> |
| <ul style="list-style-type: none"> ■ The policy for preventing and managing conflicts of interest and information about the safeguards established to ensure any agreement between the AIFMs or the AIFs and the company is at arm’s length. | <p>Part V section 7 requires the private equity firm to disclose on its website (through an annual review or regular updates) a “confirmation that arrangements are in place to deal appropriately with conflicts of interest, in particular where it has a corporate advisory capability alongside” its fund management business. Details of the policy and applicable safeguards may be disclosed by the private equity firm although the Guidelines do not explicitly require this</p> |
| <ul style="list-style-type: none"> ■ The policy for external and internal communication relating to the company, in particular as regards employees. | <p>Part V section 4 requires portfolio companies to prepare a strategic report which includes provisions in the Companies Act 2006 normally applicable to quoted companies. Portfolio companies therefore include extended information about the company, and this occurs throughout the year. Section 5c) of the Guidelines requires the portfolio company to publish “a summary mid-year update giving a brief account of major developments in the company...no more than 3 months after mid-year.”</p> <p>s414C(7) of the Companies Act 2006 requires information to be disclosed on the company’s employees and the Group expects this to include policies related to employees. Further, Part V section 10 sets out the responsibilities of private equity firms in times of strategic change, including to employees.</p> |
| <p>This information should also be communicated to the employees themselves or their representatives, and the AIFM must use its best efforts to ensure the board of directors complies with its request.</p> | <p>The disclosures set out above in Part V sections 4, 5, 7 and 10 are all expected to be included on the company’s website so this information is publicly available to employees and other stakeholders.</p> |

APPENDIX 1: DEFINITIONS AND LINKS TO DOCUMENTS

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| The Guidelines or Walker Guidelines | Guidelines for Disclosure and Transparency in Private Equity, November 2007 Sir David Walker's final guidance following an independent review in disclosure and transparency in the private equity industry. The consultation document and final guidelines are available at http://www.walker-gmg.co.uk/?section=10774 |
| The Group | The Guidelines Monitoring Group The Group was created in 2007 as an independent body to monitor the private equity industry's compliance with the Guidelines. Further detail on the membership of the Group is available at http://www.walker-gmg.co.uk/?section=10769 |
| Strategic Report Regulations | The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013 The legislation is on the Government's website available at http://www.legislation.gov.uk/ukxi/2013/1970/contents/made |
| FRC draft guidance | Draft guidance on the Strategic Report published by the Financial Reporting Council The consultation document and draft guidance is available at https://frf.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/Exposure-Draft-Guidance-on-the-Strategic-Report.aspx |
| AIFM Regulations | The Alternative Investment Fund Managers Regulations 2013 HM Treasury's consultation and the final AIFM Regulations are available at https://www.gov.uk/government/consultations/transposition-of-the-alternative-investment-fund-managers-directive--2 |
| BVCA | The British Private Equity and Venture Capital Association |

Reports published by the Guidelines Monitoring Group on its monitoring activities, the Q&A published in the Group's publication in July 2013 and the prior editions of the Good Practice Guide, prepared by PwC, are available on the Group's website accessible at <http://www.walker-gmg.co.uk/?section=11664>.

The BVCA Guide to Responsible Investment is available at <http://www.bvca.co.uk/ResearchPublications/BVCAGuidetoResponsibleInvestment.aspx>.

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APPENDIX 2: PART V OF THE GUIDELINES

Part V of the Guidelines sets out Sir David Walker's final guidance on the enhanced disclosure obligations placed upon portfolio companies and private equity firms. As there have been changes since 2008 to the Guidelines, this appendix sets out the full text of the current proposed amendments and the amendments that have been implemented since the Guidelines were first issued. The amendments proposed in this consultation document have been highlighted in blue below.

These Guidelines should be read in conjunction with the Q&A published by the Group in summer 2013 (see appendix 1).

V. 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 FCA 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

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 and 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 strategic report that substantially conforms to the provisions of [Chapter 4A of Part 15 of the Companies Act 2006 including sub-sections 7 and 8 of section 414C](#) (which are ordinarily applicable only to quoted companies). The applicable provisions from [Chapter 4A of Part 15 of the Companies Act 2006](#) are reproduced in Chapter 2 of this document, and sub-sections 7 and 8 of section 414C provide:

s414C(7)

In the case of a quoted company the [strategic report](#) 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, community [and human rights issues](#), including information about any policies of the company in relation to those matters and the effectiveness of those policies.

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

s414C(8)

In the case of a quoted company the [strategic report](#) must include—

- a) a [description of the company's strategy](#),
- b) a [description of the company's business model](#),
- c) a [breakdown showing at the end of the financial year—](#)
 - iv. [the number of persons of each sex who were directors of the company](#);
 - v. [the number of persons of each sex who were senior managers of the company \(other than persons falling within sub-paragraph \(i\)\); and](#)
 - vi. [the number of persons of each sex who were employees of the company](#).
- 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 4. a) and d) 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.
- f) The report should include a statement by the directors of the [portfolio company](#) confirming compliance with the Guidelines or setting out explanations for areas of non-compliance.

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 FCA-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 the International Private Equity and Venture Capital Board ("IPEV") (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.
- b) value investments in their funds using either valuation guidelines published by IPEV or the applicable accounting standards.

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 (original) 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.

11. Interaction with the Alternative Investment Fund Managers Directive

Private equity firms and portfolio companies covered by the Guidelines are not expected to provide disclosure in respect of the applicable additional transparency requirements in the Alternative Investment Fund Managers Directive (the "Directive") if they do not fall within the scope of the Directive. Having performed a gap assessment, the Group was of the view that the Guidelines include the information required under the Directive in respect of disclosure in the annual reports of portfolio companies except for details on transactions in own shares. The Group expects this information to be included in the financial statements of the portfolio company where significant.

The disclosures expected by private equity firms on acquisition of portfolio companies under the Directive are more prescriptive than those set out above. The Group has decided not to amend the Guidelines in respect of these specific requirements as they are still within the spirit of the Guidelines for this particular area. Firms that are covered by the Directive may find the Guidelines and examples of good practice reporting by portfolio companies published by the Group as a useful source of guidance but are responsible for taking appropriate advice to ensure they are fully compliant with their obligations.

The tables below set out examples of how the Guidelines interact with the AIFMD's transparency requirements in respect of the annual reports of portfolio companies and the disclosure expected on acquisition of control. The requirements apply to non-listed companies with registered offices in the EU.

a) Annual report disclosures

| AIFMD requirements– annual report disclosures <i>Regulation 42 of the AIFM Regulations (Annual report of AIFs exercising control of non-listed companies)</i> | Guidelines requirements <i>Part V Sections 4 and 5 of the Guidelines (Guidelines for enhanced disclosure by portfolio companies and private equity firms)</i> |
|--|--|
| <p>The following disclosures are required about each non-listed company over which an AIF individually or jointly has control. They can be included in the annual report of the AIF and/or the non-listed company.</p> | <p>The following disclosures are required to be included in the annual report of the portfolio company and not the private equity fund.</p> |
| <ul style="list-style-type: none"> ■ A fair review of the development of the company's business representing the situation at the end of the period covered by the annual report; | <p>Part V section 4 requires portfolio companies to prepare a strategic report which includes provisions in the Companies Act 2006 normally applicable to quoted companies. The strategic report requirements set out in s414C(2) and s414C(3) of the Companies Act 2006 will assist firms to comply with this requirement. They require "a fair review of the company's business" and a "balanced and comprehensive analysis of the development and performance of the company's business" during the financial year and the position at the end of that year. s414C(4) also requires the disclosure of financial and non-financial key performance indicators to support the analysis.</p> |
| <ul style="list-style-type: none"> ■ Any important events that have occurred since the end of the financial year; | <p>The Group expects this information to be included to comply with the requirements of the strategic report as the report should have forward looking orientation. Further, this information is expected to be disclosed under UK and international accounting standards.</p> |
| <ul style="list-style-type: none"> ■ The company's likely future development; and | <p>The strategic report requirements set out in s414C(7) of the Companies Act 2006 will assist firms to comply with this requirement. It requires information on "the main trends and factors likely to affect the future development, performance and position of the company's business."</p> |
| <ul style="list-style-type: none"> ■ Details of any acquisitions or disposals of own shares. | <p>The Group expects this information to be included in the financial statements of the portfolio company where significant and has chosen not to incorporate this disclosure requirement as it was removed by BIS from the directors' report as it was not considered a significant disclosure. This approach is in line with the Guidelines which do not prescribe disclosures that go beyond those required of quoted companies.</p> |
| <p>The disclosures must be made within six months of the year-end of the AIF.</p> | <p>Part V section 5b) of the Guidelines requires the annual report of the portfolio company to be made available no more than 6 months after the company year end. Where the year end of the portfolio company and the AIF are the same then the AIFMD requirement is likely to be fulfilled. Where the year end of the portfolio company differs to that of the AIF then firms may need to amend the timing of reporting of the portfolio company accordingly.</p> |
| <p>If the information is included in the AIF's annual report then the AIFM must use best efforts to ensure the board of the company makes the information available to all employee representatives or (where there are none) to the company's employees directly.</p> | <p>Part V section 5a) of the Guidelines requires the annual report of the portfolio company to be readily accessible on the company website. This ensures that employees and other stakeholders are able to access this information publicly.</p> |

b) Disclosures required on acquisition of control

| AIFMD requirements – disclosures on acquisition of control <i>Regulation 39 of the AIFM Regulations (Disclosure in case of acquisition of control)</i> | Guidelines requirements <i>Part V Sections 4, 5, 7 and 10 of the Guidelines (Guidelines for enhanced disclosure by portfolio companies and private equity firms)</i> |
|---|--|
| <p>When control is acquired, the AIFM must disclose its intentions to the regulator, the company and its shareholders about the future of the business and likely repercussions on employment by the company and material change in the conditions of employment.</p> | <p>Part V section 10 of the Guidelines sets out the responsibilities of the private equity firm at a time of significant strategic change. It requires a commitment 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.” Although the precise wording is not the same, the AIFMD requirements are in the spirit of what is intended by the Guidelines. The Guidelines, however, do not include the obligation to disclose information to regulators.</p> |
| <p>Other areas where disclosure is required:</p> | |
| <ul style="list-style-type: none"> ■ The identity of the AIFM(s) with control. | <p>Part V sections 4a) and 4b) of the Guidelines require disclosure of the fund(s) that own the company, details on executives or advisers of the private equity firm that have oversight of the company and details on board composition, identifying those directors from the private equity firm.</p> |
| <ul style="list-style-type: none"> ■ The policy for preventing and managing conflicts of interest and information about the safeguards established to ensure any agreement between the AIFMs or the AIFs and the company is at arm’s length. | <p>Part V section 7 requires the private equity firm to disclose on its website (through an annual review or regular updates) a “confirmation that arrangements are in place to deal appropriately with conflicts of interest, in particular where it has a corporate advisory capability alongside” its fund management business.</p> <p>Details of the policy and applicable safeguards may be disclosed by the private equity firm although the Guidelines do not explicitly require this.</p> |
| <ul style="list-style-type: none"> ■ The policy for external and internal communication relating to the company, in particular as regards employees. | <p>Part V section 4 requires portfolio companies to prepare a strategic report which includes provisions in the Companies Act 2006 normally applicable to quoted companies. Portfolio companies therefore include extended information about the company, and this occurs throughout the year. Section 5c) of the Guidelines requires the portfolio company to publish “a summary mid-year update giving a brief account of major developments in the company...no more than 3 months after mid-year.”</p> <p>s414C(7) of the Companies Act 2006 requires information to be disclosed on the company’s employees and the Group expects this to include policies related to employees. Further, Part V section 10 sets out the responsibilities of private equity firms in times of strategic change, including to employees.</p> |
| <p>This information should also be communicated to the employees themselves or their representatives, and the AIFM must use its best efforts to ensure the board of directors complies with its request.</p> | <p>The disclosures set out above in Part V sections 4, 5, 7 and 10 are all expected to be included on the company’s website so this information is publicly available to employees and other stakeholders.</p> |

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