Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

FUTURE DEVELOPMENT OF THE WALKER GUIDELINES – JULY 2013

GUIDELINES MONITORING GROUP

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GUIDELINES MONITORING GROUP

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"). Over the past five years, the industry has embraced and adopted these Guidelines with thirty-five private equity firms and almost eighty of their portfolio companies currently providing additional disclosure voluntarily. This publication outlines our plan for promoting and developing the Guidelines.

Our objective has been to promote the Guidelines as an effective way to engage with stakeholders by ensuring private equity firms publish key information on their websites, and that covered portfolio companies report to at least the standard seen in the FTSE 350. It was disappointing to see the overall level of compliance fall last year and the Group is continuing its work with private equity firms and portfolio companies that did not meet the required benchmark. This fall could, in part, be attributed to new and generally smaller entrants to the Walker population and fewer companies being taken private. In Section 2 we therefore answer some of the most commonly asked questions about the Guidelines and hope this, along with our good practice guides, will assist firms in the coming years.

To ensure private equity firms commit to their responsibilities, we request that they sign a statement of conformity each year as set out in Appendix 1. Many firms had signed such a statement when the Guidelines were first launched and we are institutionalising this as an annual commitment. We will also review the disclosures provided by private equity firms on their websites.

The Group is committed to enhancing transparency and disclosure and this means adapting the Guidelines over time to ensure they remain relevant and fit for purpose. In Section 3 we provide further detail on how the Guidelines interact with the requirements of the most significant EU directive to affect firms from a regulatory perspective – the Alternative Investment Fund Managers Directive, which will become law from 22 July 2013. In Section 4 we explain the changes to narrative reporting we are monitoring that would require the Guidelines to be updated, such as the introduction of a strategic report. These changes to the Companies Act 2006 will affect all private companies, as well as quoted companies, and it is the responsibility of the directors of those companies - which often include private equity firms – to ensure compliance from October 2013.

We will consult on significant amendments to the Guidelines and, in particular, the additional disclosures for quoted companies which would be incorporated. Our expected timetable is outlined in Section 5. The consultation process also includes a review of the size thresholds set in the Guidelines to assess if they remain appropriate in light of corporate governance and regulatory developments.

Finally, the Group has been reviewing its own governance arrangements to ensure we maintain the right balance of continuity and fresh insight. After a significant contribution to the Group over the years, Alan Thomson has stepped down as an independent member and we are recruiting his successor. I will also be stepping down as the Chairman of the Group when we have found a suitable replacement, and the Group is actively working on my succession.

We do hope firms find this update informative and that it assists the industry in its planning for compliance with the Guidelines in the future.

Sir Michael Rake

Chairman – Guidelines Monitoring Group

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Q&A – NAVIGATING THE GUIDELINES

The Guidelines set out recommendations and enhanced disclosure requirements for private equity firms, their UK portfolio companies and the BVCA. When implementing the Guidelines, private equity firms and their portfolio companies are required to "comply or explain". The Group publishes a report each year reviewing compliance with the Guidelines and will name firms that do not comply.

The Guidelines are available at http://www.walker-gmg.co.uk and the most frequently asked questions from a portfolio company's perspective are set out below.

1. What are the responsibilities of a private equity firm?

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

Additionally, private equity firms should, in their reporting to limited partners, follow established guidelines (such as those published by the IPEV Board); 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 ensure that their portfolio companies comply with (or explain departures from) the required disclosure and provide data on their portfolio companies for annual reporting on performance.

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.

A private equity firm is also required to sign the statement of conformity annually included in Appendix 1.

2. What are the requirements for portfolio companies covered by the Guidelines?

In summary, 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 or private equity-like 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 light of the principal financial risks and uncertainties facing the company with links to the appropriate detail in the notes to the accounts; and
- The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including the Enhanced Business Review requirements that are ordinarily applicable only to quoted companies.

The financial and business review disclosures above are expected to be included in the Directors' report and bring together key elements of the financial statements.

3. Which portfolio companies are covered by the Guidelines?

For the purposes of the Guidelines, a portfolio company is a UK company:

1. Acquired by one or more private equity firms in a public to private transaction where the market capitalisation together with the premium for acquisition of control was in excess of £210 million (reduced from £300 million) and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents; or

2. Acquired by one or more private equity firms in a secondary or other non-market transaction where enterprise value at the time of the transaction was in excess of £350 million (reduced from £500 million) and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents.

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

4. Do you have further guidance on what constitutes an "acquisition" of a Walker company?

A portfolio company of a PE firm becomes a Walker company, subject to meeting the other criteria as laid out in the Guidelines, when any one of the following criteria is met:

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

The Group will independently review acquisitions of portfolio companies to assess if they are part of the Walker population and answer any questions firms have regarding scope and definitions.

5. What if more than one PE firm is involved in the transaction?

Where more than one PE firm is involved in a transaction and they collectively own a controlling stake in a portfolio company, those firms will be jointly and severally responsible for ensuring that the portfolio company applies the Guidelines, and each of those firms will be assessed for PE firm compliance.

6. When does a portfolio company cease to be within scope of the Guidelines, including instances where we no longer have a majority ownership interest?

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

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

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

7. We have significantly reduced in size since the initial transaction that brought us within scope and/or have undergone restructuring/ disposals reducing our overall market value – are we still in scope?

Yes. A portfolio company remains within the Walker population until one of the criteria set out in question 6) are met. This means that even if the enterprise value of a company or the number of employees falls below the thresholds set in question 3), it is still a Walker company.

8. We are a UK company owned by a non-UK PE firm who is not BVCA member – are we in scope?

Yes. The Guidelines promote disclosure and transparency throughout the industry in the UK and this therefore extends to firms that are not BVCA members or based outside of the UK. Further, as explained in section 3), the Guidelines and examples of good practice will assist firms when implementing the Alternative Investment Fund Managers Directive as there are additional disclosure requirements for certain portfolio companies.

9. We are owned by an infrastructure fund/pension fund/sovereign wealth fund. Why are we in scope?

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. As explained in question 8), we are committed to promoting transparency across the industry and as business and ownership models evolve (e.g. pension funds investing directly), we must capture all relevant firms.

10. We were bought by a private equity fund shortly before our year end. Which is the first year where we have to apply the Guidelines?

The Group's annual report will review compliance by portfolio companies that were within the Walker population in the preceding calendar year. The report to be published in December 2013 will cover portfolio companies that were in the Walker population between 1 January 2012 and 31 December 2012. Therefore, if you were acquired in October 2012 and your year end is December 2012, you still need to produce financial statements that comply (or explain) with the Guidelines.

11. What guidance is available to help me prepare the financial statements?

The Group and PwC publish a good practice guide each year. The guide provides clear and in-depth information for companies required to conform to the Guidelines and provides a number of real-life examples to illustrate what is required. The guides are available at http://www.walker-gmg.co.uk

The BVCA also produces a guide to Responsible Investment. The publication seeks to improve firms' understanding of environmental, social and governance (ESG) risks and opportunities, showing how these can be managed within a structured investment framework. An effective responsible investment approach requires a focus on ESG issues throughout all phases of every investment, from pre-investment diligence, through active ownership, up to the time of exit. This guide takes the guidance offered to a more detailed and practical level, throughout the life cycle of private equity and venture capital investments.

12. We consider some of the information required by the Guidelines to be commercially sensitive and as a private company we do not want to disclose this as our competitors do not. Will we be named as non-compliant?

The Guidelines are implemented on a "comply or explain" basis. Companies therefore have the option to "explain" why certain disclosures have not been included. There have been few instances of companies opting to explain in recent reviews and the Group may not accept the explanation provided.

When a portfolio company and its owner(s) choose not to comply with Guidelines, they are named as non-compliant in the annual report published by the Group. With respect to concerns about the publication of sensitive information, the guides discussed in question 11) provide examples of the detail companies present in their financial statements. Further, the Guidelines incorporate section 417 of the Companies Act 2006 which includes the following:

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.

13. We do not produce UK Group accounts as we have a top company in another country. Do we have to put the disclosures in our UK subsidiaries or in our non-UK Group accounts?

The disclosures should be included in the accounts that present the trading results of the business and its capital structure, notably any debt with third parties. This can be a group company which is not itself a UK limited company or equivalent and companies within the current Walker population produce and publish consolidated accounts for group companies outside of the UK. The disclosures do not need to be replicated in subsidiary financial statements.

14. We only have a retail & consumer website and do not have a corporate site – do we need to put our accounts on the website?

Yes. The accounts should be available on a company's website or linked to another site which does include corporate information.

15. We are already covered by our industry's disclosure requirements and therefore we would suffer additional burden if we complied with the Guidelines too – does one requirement take precedent or do we apply both?

Portfolio companies should apply both sets of requirements. Often the requirements of the Guidelines are already covered by industry requirements e.g. those required by Ofwat for water companies.

16. Why is there a requirement to provide portfolio company data beyond the annual report?

Each year, the industry is required as part of the Guidelines to publish a report that aggregates the performance of the portfolio companies that meet the criteria. This investigates trends at a summary level, in employment, investing, trading and drivers of returns. A data template is provided each year to the private equity firm or the portfolio company directly to enable this reporting.

17. What is the BVCA's role?

The BVCA supports the work of the Group. The Guidelines also recommended the following and the BVCA complies with these recommendations.

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

Each year, the BVCA commissions E&Y to undertake research on the performance of portfolio companies and the annual reports can be found at http://www.bvca.co.uk/Research. The BVCA continues to encourage private equity-like groups to comply with the Guidelines and liaise with trade associations across Europe on research activities.

3 THE IMPACT OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

The Alternative Investment Fund Managers Directive ("AIFMD" or the "Directive") was published in July 2011 and will be implemented into UK law by 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 applies 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 Transparency and disclosure

With respect to transparency, the Directive includes requirements setting out what must be disclosed to investors in the AIF and regulators. Of interest to the Group are the further disclosure obligations for AIFMs where the AIFs they manage hold controlling interests in EU companies. We have summarised the key points below as the Guidelines and examples of good practice will assist firms with complying with certain disclosure requirements included in the AIFMD. The Group will also amend the Guidelines to explain the interaction with the AIFMD.

The transparency articles in the Directive 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 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).

We have outlined below the implications from a narrative reporting perspective only. The following requirements apply to non-listed companies with registered offices in the EU.

3.2 Disclosures required on acquisition

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.

Other areas where disclosure is required:

- The identity of the AIFM(s) with control.
- 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.
- The policy for external and internal communication relating to the company, in particular as regards employees.

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.

PE firms complying with the Guidelines have certain obligations to communicate with employees on a timely basis through periods of significant strategic change. This will now be required under the AIFMD.

3.3 Disclosures in the annual report

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.

- 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;
- Any important events that have occurred since the end of the financial year;
- The company's likely future development; and
- Details of any acquisitions or disposals of own shares.

The disclosures must be made within six months of the year-end of the AIF. 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.

The disclosure requirements for the annual report are included within the Guidelines and the Guidelines will be updated in due course to include references to the AIFMD and set out clearly how the requirements interact.

In summary, the legal responsibilities of private equity firms with respect to disclosure will increase for those firms and portfolio companies that are within the scope of the AIFMD. Some firms and portfolio companies in the existing Walker population may benefit from grandfathering provisions and be exempted from the disclosure requirements. The Guidelines therefore remain essential for the industry to demonstrate its commitment to transparency to all stakeholders. As part of the review of the Guidelines, we will assess the gap between the current reporting requirements and those in the AIFMD and the Government regulations explained in the next section. Any amendments proposed will meet the Group's objective of ensuring that private equity firms and covered portfolio companies disclose information to at least the standard seen in the FTSE 350.

4 NARRATIVE REPORTING CHANGES ON THE HORIZON

As part of its ongoing activities, the Group reviews changes in narrative reporting in the UK and in this section we cover two important developments which will require an amendment to the Guidelines. We closely monitor the requirements for quoted companies in particular as we would expect to apply these to covered portfolio companies. Our project plan for consulting on and implementing these changes is set out in section 5.

4.1 A new structure for narrative reporting in the UK

On 18 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.

These regulations have been finalised and will be effective for accounting periods ending on or after 30 September 2013. 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.

The strategic report replaces the business review previously included in the directors' report. Quoted companies typically present the business review upfront in their financial statements as this is of interest to investors.

4.1.1 Contents of the strategic report

This section summarises the requirements for all companies and the additional requirements for quoted companies.

For all companies:

- 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.
- 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.
- The report 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.

For quoted companies:

- the strategic report must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:
  a) a description of the company's strategy;
  b) a description of the company's business model;
  c) the main trends and factors likely to affect the future development, performance and position of the company's business; and
  d) 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 (d)(i), (ii) and (iii), it must state which of those kinds of information it does not contain.

- In the case of a quoted company, the strategic report must contain a breakdown showing at the end of the financial year:

  a) the number of persons of each sex who were directors of the company;
  b) the number of persons of each sex who were senior managers of the company (other than persons falling within paragraph (a)); and
  c) the number of persons of each sex who were employees of the company.

"senior manager" means a person who has responsibility for planning, directing or controlling the activities of the company, or a strategically significant part of the company and is an employee of the company.

- Quoted companies must also include additional disclosures concerning greenhouse gas emissions.

  a) The report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent from activities for which that company is responsible including:
     i) The combustion of fuel; and
     ii) The operation of any facility.
  b) The report must state the annual quantity of emissions in tonnes of carbon dioxide equivalent resulting from the purchase of electricity, heat, steam or cooling by the company for its own use.

The disclosures above apply only to the extent that it is practical for the company to obtain the information and if it is not practical, the report must state what has not been included and why. Defra has issued revised guidance on how to measure and report greenhouse gas emissions.

- Companies no longer have to disclose information on the following in the directors' report which are required elsewhere, or do not provide meaningful information:

  - principal activities of the company over the course of the year;
  - asset values;
  - charitable donations; and
  - policy and practice of payments to creditors.

  Additionally, private companies do not have to give information on the acquisition of own shares and quoted companies will no longer have to give details on essential contractual or other arrangements.

The Financial Reporting Council ("FRC") is currently drafting guidance which will help preparers implement the changes.

The Guidelines will need to be amended to include additions such as information on the business model, human rights issues and board diversity. There will also be deletions of requirements no longer required by law such as the disclosure of essential contracts (which should be implicit in the review of principal risks and uncertainties).

4.2 Sharman Panel of inquiry into going concern

Following on from the Sharman Panel of inquiry into going concern and liquidity risks, the FRC published a consultation paper in January 2013 proposing revised guidance to directors of all companies and the related amendments to auditing standards. Given the significance of this area to financial reporting, the Group has been monitoring its development.

The consultation period ended in April 2013 and the FRC has announced that a further consultation will take place in autumn 2013. The revised proposals are expected to be effective from October 2014 and the consultation will:

- include simplified guidance for SMEs;
- make a clearer distinction as to the meaning of going concern in the proposals compared to the basis required when preparing financial statements; and
- make a clearer link between the assessment of business viability risks and broader risk assessment.

The Group will consult on and implement amendments to the Guidelines to incorporate the guidance proposed by the FRC.

5 TIMETABLE FOR UPDATING THE GUIDELINES

The Group is responsible for ensuring that the Guidelines evolve with changes in the industry and financial reporting over time. We are committed to implementing changes that ensure Walker companies report to, or exceed, the standard seen in the FTSE 350. We will consult on amendments to the Guidelines proposed from the changes in regulation and narrative reporting as outlined in sections 3 and 4. Our proposed project plan is set out below.

	2013		2014				2015			
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Scope										
Review size thresholds for portfolio companies (and private equity firms that own them) that fall within the Walker population	Consult on changes		**If thresholds are lowered, notify firms**				Implement reduction in thresholds for firms falling within scope in 2014			
Narrative reporting	***Effective dates***									
AIFMD : • PE firms regulated under the AIFMD and not eligible for the transitional provisions • All PE firms regulated under the AIFMD must be authorised by the Financial Conduct Authority on this date.	22 July	Implement changes. No consultation as changes clarify interaction with the AIFMD or are already in the spirit of the Guidelines			22 July					
Sharman Panel of Inquiry into Going Concern and Liquidity risk – implementation of recommendations • Following the Group's consultation, changes implemented would affect firms falling within scope in 2015		Respond to consultation and review proposed guidance				October 2014 – expected effective date	Consult on changes (as final guidance is yet to be published)		Monitor compliance by listed companies	
Narrative reporting – implementation of recommendations	Periods ending on or after 30/09/13	Consult on changes		Monitor compliance by listed companies			Implement changes for firms falling within scope in 2014			

APPENDIX 1: PRIVATE EQUITY FIRMS STATEMENT OF CONFORMITY

A1

[Signatory's Letterhead]

Guidelines Monitoring Group
c/o British Private Equity & Venture Capital Association
Brettenham House, Lancaster Place
London WC2E 7EN

Attn: Tim Hames *[Date]*

Dear Sirs,

Guidelines for Disclosure and Transparency in Private Equity – Statement of Conformity

We refer to the *Guidelines for Disclosure and Transparency in Private Equity,* published by the Walker Working Group on 20th November, 2007 (the "Guidelines").

We confirm that we are aware of the disclosure recommendations made in the Guidelines, in relation to:

- Content of enhanced disclosure by a portfolio company;
- Form and timing of public reporting by a portfolio company;
- Data input by a portfolio company to the industry association;
- Communication by a private equity firm; and
- Data input by private equity firms to the industry association.

We [are aware of our obligations as a member of the British Private Equity & Venture Capital Association (the "BVCA") under the Guidelines] [and] / [have chosen to conform voluntarily with the disclosure recommendations made in the Guidelines], and hereby submit our Statement of Conformity to the Walker Guidelines Monitoring Group.

The portfolio companies that we own that fall within the enhanced disclosure requirements of the Guidelines are:

[Name] [Year end] [Acquisition date]

We confirm this list includes all our portfolio companies that are required to make enhanced disclosure under the Guidelines.

In addition, the following companies that we own, which do not meet the definition of Portfolio Companies per V3 of the Guidelines, but will conform voluntarily with the enhanced disclosure requirements are:

[Name] [Year end] [Acquisition date]

We hereby confirm on behalf of ourselves and the relevant portfolio companies that as at [ ], we are compliant with our obligations under the Guidelines.

[To the extent that we have not complied with any of the requirements, the reasons are stated below.

[ ]

Yours faithfully

For and on behalf of: *[Private Equity Firm]*

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