

Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

THIRD REPORT – DECEMBER 2010

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EXECUTIVE SUMMARY



1.1 Introduction

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

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

1.2 The Guidelines

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

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

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

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

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

1.3 Guidelines Monitoring Group

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

1.4 Private equity firms and Portfolio Companies covered by the Guidelines

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

Private equity firms

Thirty-five private equity firms are covered by the Guidelines this year, an increase of one from the prior year. Within this population, two "private equity-like" firms not strictly covered by the Guidelines, Arcapita and Dubai International Capital, have conformed to the Guidelines.

In last year's report, Doncasters and Travelodge, owned by Dubai International Capital, and Viridian Group, owned by Arcapita and Electricinvest, were included as required Portfolio Companies. Each of these companies has been included as a required Portfolio Company again this year. Dubai International Capital and Arcapita are not FSA authorised and as such do not meet the definition of a private equity firm for the purpose of the Guidelines. As such these Portfolio Companies could be included in the voluntary company population. The GMG has decided to include these Portfolio Companies as required rather than voluntary again this year. The basis for this decision is that a consultation process is underway with private equity firms, and it is expected that the definition of a private equity firm will be revised to include private equity firms not FSA authorised.

One non BVCA member has continued to participate on a voluntary basis: the French private equity firm PAI Partners.

Portfolio Companies

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

The decrease in the number of companies covered by the Guidelines this year is a consequence of the following:

- Macquarie Communications Infrastructure Group was acquired by the Canada Pension Plan Investment Board, the result of this and some additional transactions being that Macquarie no longer control Arqiva for the purpose of the Guidelines;
- Baxi merged with De Dietrich Remeha, the result of which is that BC Partners no longer control Baxi for the purpose of the Guidelines;
- The exit of Simple Health and Beauty (Accantia) by Duke Street to US based beauty business Alberto Culver Company;
- Duke Street removed 2e2 as a voluntary Portfolio Company; and

- Autobahn Tank & Rast Holding has been excluded from the voluntary portfolio company list this year. Terra Firma confirms that whilst the company complies with the German guidelines, it is not fully compliant with the UK requirements.

The BVCA, at the request of the Group, has been active during the year meeting with private equity firms and “private equity-like” firms to discuss voluntary conformity to the Guidelines. Based on the discussions held to date, the Group is hopeful that the number of volunteers will increase during 2011.

1.5 Review of conformity

As last year, PricewaterhouseCoopers LLP (“PwC”) was appointed to assist the Group in carrying out this year’s review of the disclosures made by a sample of Portfolio Companies with year ends up to and including 30 April 2010. This report summarises the findings of that exercise along with the Group’s own review of the other requirements of the Guidelines.

Overview

The findings of this year’s review identified a higher level of compliance than in previous years. This is encouraging and reflects the high level of commitment to the Guidelines from the private equity industry. The Group continues to provide feedback to each firm that is reviewed, identifying where disclosure met or went beyond the requirements, and where improvements can be made.

The Group commissioned a guide, published by PwC in March 2010, entitled ‘Improving transparency and disclosure – good practice reporting by Portfolio Companies’. The objective of the guide was to provide practical assistance to companies to help improve levels of transparency and disclosure. The guide highlighted good practice and included examples of Portfolio Company reporting reviewed by the Group over the last two years. The guide was launched at an event attended by individuals from private equity firms and Portfolio Companies that have agreed to comply with the Guidelines.

The Group commissioned a report, published in December 2010, entitled ‘Transparency in reporting – a comparison of reporting by private equity owned companies and listed companies’. The report compares reporting by private equity owned companies and FTSE 350 companies. The report concludes that private equity owned companies report to a standard that is generally consistent with reporting by FTSE 350 companies, and in places better. The key findings include:

- Disclosure of principal risks and uncertainties is an area of strong compliance by both sets of populations;
- Explanation of the trends and factors likely to impact future development, performance and position of the business is an area where Portfolio Companies lead FTSE 350 companies;
- The majority of both populations do not use their strategy to underpin reporting or clearly align this within risk assessment and key performance indicators (“KPIs”), however Portfolio Companies lead FTSE 350 companies in this area; and
- Portfolio Companies are slightly better than the FTSE 350 companies at disclosing material contractual arrangements.

As in the previous two years, the Group will be providing personalised letters to all firms that had Portfolio Companies reviewed. The letter will set out the findings of this year’s review and make recommendations where improvements can be made.

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

Portfolio Companies

PwC reviewed a sample of thirty-two Portfolio Companies out of a total population of fifty-five companies. The population selected for review contains six companies not previously reviewed, eighteen companies reviewed in 2008 or 2009 and assessed as compliant, and eight companies reviewed in 2009 and assessed as unsatisfactory. The Group is pleased to confirm that it has now reviewed all Portfolio Companies in the population, and will continue with its policy of re-reviewing companies whose reporting is regarded as unsatisfactory.

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

Guidelines specific:

The Guidelines include specific requirements to provide information about the private equity firm, the composition of the board and to include a financial review. These requirements were met in the large majority of cases.

Business Review (required by UK Companies Act):

The disclosure requirements relating to the financial position, financial risks and principal risks and uncertainties were generally met. The disclosure of non-financial KPIs and trends and factors remains an area for improvement.

Enhanced Business Review:

The standard of disclosure in respect of non-financial KPIs, social and community issues, environmental matters and essential contractual arrangements was mixed. Whilst some companies provided detailed disclosure in these areas, some fell short of the requirements.

Overall assessment of Portfolio Company disclosures

Initially, five of the companies reviewed, including three of those being re-reviewed, were assessed by the Group as not having met the requirements to a satisfactory degree. After discussion between the Group and the private equity owners of the Portfolio Companies concerned, the companies addressed the exceptions identified and met the requirements. As such, the Group considers that all thirty-two companies reviewed by the Group this year, when assessed in overall terms, have met the Guidelines' enhanced disclosure requirements.

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

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

One Portfolio Company that is required to comply with the Guidelines, The Vita Group, owned by TPG, has chosen to 'explain' rather than 'comply'. Due to legal reasons, the publishing of the accounts of The Vita Group was delayed, and released on the company's website a week before release of this report. Given these delays, the Group has not been able to perform a review of these accounts for the purposes of this report.

Private equity firm disclosures

It was reported in last year's report that all thirty-four private equity firms covered by the Guidelines were now in full conformity with each of the individual requirements. This represented a significant improvement in conformity from the findings in the first year. Given last year's findings, the Group selected a smaller sample of ten private equity firms this year and found no exceptions to the requirements.

Other requirements

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

1.6 Performance of Portfolio Companies

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

Ernst & Young were commissioned again this year to undertake the research. All private equity firms meeting the criteria complied with the request to provide information on the performance of their companies.

As at 31 December 2009, there were 43 Portfolio Companies included in the report. The decrease from the 47 as at 31 December 2008 reflects four exits and no new investments, and is the first year over the past five that the number of Portfolio Companies has declined.

The 43 Portfolio Companies were acquired for an aggregate £77bn in enterprise value, funded by £25bn of equity investment and £52bn of net third party debt. At latest year ends (through to latest date of March 2010), the 43 Portfolio Companies had total revenue of £47bn, EBITDA of £8bn, and 315,000 direct employees; 64% of revenue and 78% of employment was in the UK.

The report can be found on the BVCA website at www.bvca.co.uk/Research.

1.7 Future activities of the Group

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

- Considering an addition to the Guidelines which would require Portfolio Companies to disclose that the company has adopted the Guidelines;
- Conducting a consultation process with private equity firms about a possible amendment to the definition of a private equity firm for the purpose of the Guidelines; and
- Continuing to consider further reductions to the enterprise value thresholds.

2

OVERVIEW OF THE GUIDELINES

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

The requirements and recommendations of the Guidelines are reproduced in appendices 3, 4 and 5. Set out below is a summary of those requirements and recommendations.

2.1 Definition of private equity firms and Portfolio Companies covered by the Guidelines

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

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

A Portfolio Company is a UK company:

- a) acquired by one or more private equity firms in a public to private transaction where the market capitalisation together with the premium for acquisition of control was in excess of £210 million (reduced from £300 million) and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents; or
- b) acquired by one or more private equity firms in a secondary or other non-market transaction where enterprise value at the time of the transaction was in excess of £350 million (reduced from £500 million) and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents.

The above definition of a Portfolio Company reflects the changes made to the criteria in April 2010 and will be effective for accounting year ends of 31 December 2010 and onwards.

2.2 Summary of the content and timing of disclosure required by Portfolio Companies

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

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

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

The full detailed requirements for Portfolio Company disclosure can be found at Appendix 3.

2.3 Disclosure and communication required by private equity firms

Disclosures

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

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

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

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

2.4 Recommendations for initiatives to be undertaken by the BVCA

The Guidelines recommended that the BVCA should:

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

3

REVIEW OF CONFORMITY WITH THE GUIDELINES

3.1 Introduction

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

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

3.2 Overview of findings

The findings of this year's review identified a higher level of compliance than in previous years. This reflects the high level of commitment to the Guidelines from the private equity industry.

Each of the thirty-two companies in the sample is subject to a review of its disclosures under fourteen criteria. Across the entire population there were only twenty-one exceptions identified, eleven of which related to required companies.

It was found that Portfolio Company reporting was broadly consistent with reporting by FTSE 350 companies, and in places better.

The results of this year's review are encouraging. There remain areas for improvement. The Group will identify where improvements can be made in feedback letters it provides to private equity firms and Portfolio Companies.

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Portfolio Companies

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

The decrease in the number of companies covered by the Guidelines this year is a consequence of the following:

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- Baxi merged with De Dietrich Remeha, the result of which is that BC Partners no longer control Baxi for the purpose of the Guidelines;
- The exit of Simple Health and Beauty (Accantia) by Duke Street to US based beauty business Alberto Culver Company;
- Duke Street removed 2e2 as a voluntary Portfolio Company; and
- Autobahn Tank & Rast Holding has been excluded from the voluntary portfolio company list this year. Terra Firma confirms that whilst the company complies with the German guidelines, it is not fully compliant with the UK requirements.

3.4 Review of disclosure by Portfolio Companies

Overview of findings

There has been a higher level of compliance this year. The improvement in reporting reflects a high level of commitment from the private equity industry. There remain areas for improvement, and the Group will provide feedback to private equity firms and Portfolio Companies outlining where improvement can be made.

The sample selected has ensured that since inception of the Guidelines, all Portfolio Companies have been reviewed. Firms have continued to embrace the process and have taken on board feedback and improved reporting.

The Group is pleased to confirm that it has now reviewed all Portfolio Companies in the population, and will continue with its policy of re-reviewing companies whose reporting is regarded as unsatisfactory.

Two of the six companies reviewed for the first time this year were an overall exception following the initial review process. After discussion between the Group and the private equity owners of these companies, the exceptions were addressed, and all of the six companies met the requirements. Exceptions to the criteria mainly arose in the disclosure of risks and uncertainties, non-financial KPI's, social and community issues and essential contracts.

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

Of the eight companies reviewed for a second time this year, and previously assessed as unsatisfactory, five significantly improved and now have acceptable levels of disclosure. There remains room for improvement in this population and the feedback letters will outline where improvement can be made.

There was a mixed standard of disclosure for trends and factors affecting future performance and development of the business, non-financial KPIs, social and community issues, environmental matters and essential contractual arrangements. Whilst some companies provided good disclosure in these areas, several fell short of what was expected.

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

- compliance with financial position requirements to include an explanation of the year end debt and capital structure of the company and its funding requirements;
- compliance with financial risk requirements to include discussion about overall risk management objectives and policies, and risk management policies in relation to the company's leverage; and
- disclosure of principal risks and uncertainties facing the company, avoiding a list of standard risks.

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

- disclosure of non-financial KPIs for example around employee retention;
- disclosure of trends and factors affecting future performance and development of the business;
- disclosure of social and community issues affecting the business and the policies to address them;
- disclosure of environmental matters affecting the business, the policies in place to address them, and the impact of these policies; and
- disclosure of essential contractual arrangements such as with major suppliers and key customers.

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

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

Detailed findings

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

The requirements for Portfolio Company disclosures under the Guidelines can be separated into three areas:

- **Guidelines specific:** identity of the private equity firm, details on board composition and the financial review;

- **Business Review (required by UK Companies Act):** a fair review of the business, details of principal uncertainties and risks and the use of KPIs; and
- **Enhanced Business Review:** additional requirements comprising information on trends and factors affecting future performance, environmental matters, employees, social and community issues and details of essential contractual arrangements.

Initially, five of the companies reviewed, including three of those being re-reviewed, were assessed by the Group as not having met the requirements to a satisfactory degree. After discussion between the Group and the private equity owners of the Portfolio Companies concerned, the companies addressed the exceptions identified and met the requirements.

WALKER GUIDELINE SPECIFIC DISCLOSURES

Identity of the private equity firm

Requirement

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

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

Findings

The requirement was met by twenty-eight out of the sample of thirty-two companies. Eight companies went further than the basic requirement and also disclosed the name of the managed fund in the private equity group as well as that of the private equity firm itself. There was one instance where a company disclosed the name of the private equity firm on the company's website but not in the annual report, which is regarded as unsatisfactory.

Details on board composition

Requirement

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

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

Findings

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

Financial review

Requirement

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

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

Findings

The analysis of this requirement was divided into two parts: firstly the financial position of the entity at year-end and secondly the identification of financial risks.

Financial position at year-end

This requirement was one of the most successfully met by the Portfolio Companies reviewed, with twenty-eight companies out of the sample of thirty-two companies reporting good disclosure. Two companies barely met the requirements and no exceptions were noted. The best examples included pro forma information to enable meaningful comparatives to be provided.

Financial risks

The companies broadly met this requirement. Seven companies were considered good examples of disclosure of financial risks. There were two companies which barely met the requirements. One company provided no disclosure of financial risks.

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

BUSINESS REVIEW (REQUIRED BY UK COMPANIES ACT)

Fair review of the business

Requirement

"The business review must contain a fair review of the company's business."

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

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

Findings

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

Business strategy

A majority of companies reviewed included some discussion on corporate strategy. One exception was noted whereby a company did not include any information on strategy. The standard of disclosures varied, with only a few companies using the strategy to underpin reporting. Three companies were assessed as barely meeting the requirements.

When comparing with the FTSE 350 population, the majority of both populations does not use their strategy to underpin reporting or clearly align this within risk assessment and KPIs, however Portfolio Companies lead FTSE 350 companies in this area.

Market environment

Most companies met this requirement although there was some variation in the standard of disclosure. Where companies provided a comprehensive analysis, graphics and diagrams were used to aid the disclosures. Eight companies barely met the requirements. No exceptions were noted.

Principal risks and uncertainties facing the company

Requirement

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

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

Findings

This was one of the better areas of compliance with eight companies providing good disclosure. In a small number of companies the risks had to be inferred from the other information provided rather than being explicitly identified. Four companies barely met the requirements. One company did not disclose principal risks and uncertainties.

Key performance indicators

Requirement

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

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

Findings

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

Financial key performance indicators

All companies either implicitly or explicitly disclosed some financial KPIs. There were two companies with unsatisfactory disclosure in this area. One company was assessed as an exception. Only four companies clearly aligned their KPIs with their strategy.

Non financial key performance indicators

There were seven good examples of disclosure but for most of the companies reviewed this is an area for improvement. This is particularly marked for companies which identified operational strategies and risks but did not identify corresponding KPIs. The utility companies provided good disclosures of non-financial KPIs, perhaps due to the regulated nature of their businesses. Four companies provided no evidence of non-financial KPIs.

In this year’s analysis comparing FTSE 350 companies to Portfolio Companies, it was found that ninety-four percent of the Portfolio Company population met the requirements for disclosing KPIs versus eighty-eight percent of FTSE 350 companies.

Enhanced Business Review

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

Trends and factors affecting future development, performance or position

Requirement

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

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

Findings

Overall companies complied with this requirement but the quality was mixed. Given market conditions there was an expectation to see an increase in the discussion of current market trends as management try to provide a sense of the quality and sustainability of corporate performance, for example issues relating to raising finance. Overall the content of the annual reports reviewed was historical in focus providing a review of the current year’s performance and lacking in discussion about future performance. Few companies provided quantitative information to support their discussion. Two companies provided no information on trends and factors affecting the future.

Environmental matters

Requirement

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

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

Findings

There was broad compliance with this requirement, although the responses varied quite considerably between high level statements and more detailed disclosure. Seven companies out of the sample of thirty-two companies provided good disclosure on environmental matters. Twenty-one companies provided some disclosure of environmental matters but the quality varied. Several companies noted that this is an area they have only recently started monitoring. There were three exceptions to this requirement.

Employees

Requirement

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

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

Findings

There was overall compliance in this area, but there is opportunity for improvement. Three companies went beyond the Guidelines and provided good disclosure. All companies reviewed disclosed information on their employees. Of the companies that provided information in addition to the Companies Act requirements, very few companies provided a significant amount of detailed information. One company limited disclosure to basic Companies Act requirements and had unsatisfactory disclosure in this area.

Social and community issues

Requirement

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

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

Findings

This requirement was met by sixteen out of the sample of thirty-two companies. There were a few good examples of reporting however a majority of companies had poor disclosure and there were six exceptions. For example, few companies in the sample provided any discussion about local employment policies.

Essential contractual or other arrangements

Requirement

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

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

Findings

Although this is a developing area and not immediately obvious to judge objectively, the Group considers that most of the companies reviewed could improve disclosure. Only two companies provided good disclosure in this area. Often the existence of contractual or other arrangements was scattered throughout the report and there were few examples of companies which provided the information under a specific heading. This is not inconsistent with what has been observed in reporting by listed companies. There was one exception to this requirement.

3.5 Review of disclosure by private equity firms

Overview

Requirement

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

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

Findings

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

3.6 Other requirements and recommendations

Introduction

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

Findings

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

Performance of Portfolio Companies

As at 31 December 2009, there were 43 Portfolio Companies included in the report. The decrease from the 47 as at 31 December 2008 reflects four exits and no new investments, and is the first year over the past five that the number of Portfolio Companies has declined.

The 43 Portfolio Companies were acquired for an aggregate £77bn in enterprise value, funded by £25bn of equity investment and £52bn of net third party debt. At latest year ends (through to latest date of March 2010), the 43 Portfolio Companies had total revenue of £47bn, EBITDA of £8bn, and 315,000 direct employees; 64% of revenue and 78% of employment was in the UK.

The report can be found on the BVCA website at www.bvca.co.uk/Research.

Engagement with “private equity-like” entities

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

Fund performance measurement

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

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

APPENDIX 1: PRIVATE EQUITY FIRMS

A1

The following private equity firms have agreed to comply with the Guidelines:

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

* *Not a member of the BVCA*

** *Addition this year*

Private equity-like entity

A2

APPENDIX 2: PORTFOLIO COMPANIES

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

Required Portfolio Companies

PORTFOLIO COMPANY	OWNERS
Acromas (AA / Saga) *	Charterhouse / CVC / Permira
Airwave Solutions	Macquarie
Alliance Boots *	KKR
Annington Homes	Terra Firma
Associated British Ports	GS Capital Partners
Biffa *	Montagu Private Equity
Birds Eye Iglo	Permira
Brakes Group *	Bain Capital
CenterParcs	Blackstone
Domestic and General Group	Advent
Doncasters *	Dubai International Capital
DX Group *	Candover
Emap (as part of Guardian Media Group)	Apax
Enterprise	3i
Equiniti *	Advent
Expro *	GS Capital Partners
Findus Group (Foodvest) *	Lion Capital
Fitness First *	BC Partners
Gala Coral	Cinven / Candover / Permira
Gondola Holdings *	Cinven
John Laing *	Henderson
Merlin Entertainments Group *	Blackstone / Dubai International Capital
Moto *	Macquarie
National Car Parks *	Macquarie
NCP Services	3i
New Look *	Permira / Apax
Northgate Information Solutions	KKR
Odeon & UCI Cinemas *	Terra Firma
Osprey (AWG) *	3i
Partnerships in Care Limited	Cinven
Phones4U *	Providence
PHS	Charterhouse
QMH *	GS Capital Partners
Spire Healthcare (formerly BUPA hospitals)	Cinven

Thames Water	Macquarie
The Vita Group	TPG
Trader Media (as part of Guardian Media Group)	Apax
Travelex *	Apax
Travelodge *	Dubai International Capital
United Biscuits	Blackstone / PAI
Viridian Group *	Arcapita / Electricinvest
Wales & West Utilities *	Macquarie
Weetabix	Lion Capital

Voluntary Portfolio Companies

PORTFOLIO COMPANY	OWNERS
AWAS	Terra Firma
Deutsche Annington Immobilien	Terra Firma
EMI Group	Terra Firma
General Healthcare Group *	Apax
HIT Entertainment *	Apax
Infinis Ltd	Terra Firma
Iris *	Hellman and Friedman
Kellen Group (Phoenix Natural Gas)	Terra Firma
Kwik-Fit Group *	PAI
Keepmoat *	HBOS
Talaris *	Carlyle
Tragus *	Blackstone

* Accounts reviewed this year

Changes from last year

- Macquarie Communications Infrastructure Group was acquired by the Canada Pension Plan Investment Board, the result of this and some additional transactions being that Macquarie no longer control Arqiva for the purpose of the Guidelines.
- Baxi merged with De Dietrich Remeha, the result of which is that BC Partners no longer control Baxi for the purpose of the Guidelines.
- Duke Street sold Simple Health and Beauty (Accantia) to US based beauty business Alberto Culver Company.
- Duke Street removed 2e2 as a voluntary Portfolio Company.
- Autobahn Tank & Rast Holding has been excluded from the voluntary portfolio company list this year. Terra Firma confirms that whilst the company complies with the German guidelines, it is not fully compliant with the UK requirements.

A3

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

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

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

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

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

3. Definition of a Portfolio Company to be covered by enhanced reporting guidelines (as amended by the GMG in April 2010):

A UK company

- a) acquired by one or more private equity firms in a public to private transaction where the market capitalisation together with the premium for acquisition of control was in excess of £210 million and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents
- b) acquired by one or more private equity firms in a secondary or other non-market transaction where enterprise value at the time of the transaction is in excess of £350 million and more than 50% of revenues were generated in the UK or UK employees totalled in excess of 1,000 full-time equivalents.

4. Content of enhanced disclosure by a Portfolio Company

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

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

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

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

- a) the main trends and factors likely to affect the future development, performance and position of the company’s business; and
- b) information about—
- (i) environmental matters (including the impact of the company’s business on the environment),
 - (ii) the company’s employees, and
 - (iii) social and community issues,
- including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
- c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.

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

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

5. Form and timing of public reporting by a Portfolio Company

- a) The audited report and accounts should be readily accessible on the company website;
- b) The report and accounts should be made available no more than 6 months after the company year-end;
- c) A summary mid-year update giving a brief account of major developments in the company (but not requiring updated accounts) to be placed on the website no more than 3 months after mid-year.

6. Data input by a Portfolio Company to the industry association

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

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

7. Communication by a private equity firm

A private equity firm should publish an annual review accessible on its website or ensure regular updating of its website to communicate:

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

8. Reporting to limited partners

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

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

fund reporting, a summary of each investment by the fund, detail of the limited partner's interest in the fund and details of management and other fees attributable to the general partner (a summary of the EVCA guidelines is at Annex E).

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

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

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

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

10. Responsibility at a time of significant strategic change

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

A4

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

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

New Walker companies

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

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

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

Walker company exits

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

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

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

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

APPENDIX 5: RECOMMENDATIONS FOR INITIATIVE BY THE INDUSTRY ASSOCIATION

A5

These recommendations for initiative by the BVCA cover:

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

A. Reporting and intelligence

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

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

B. Guidelines review and monitoring

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

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

2. Composition of the Group:

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

3. Appointment of the Group:

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

4. Operations of the Group:

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

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

5. Conformity with the guidelines:

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

C. Engagement with “private equity-like” entities

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

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

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

D. Fund performance measurement.

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

APPENDIX 6: EXTRACT FROM COMPANIES ACT, 2006

A6

Section 417 Contents of directors' report: business review

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

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

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

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

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GUIDELINES
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