

Guidelines Monitoring GROUP

Private Equity Monitoring Group on Transparency and Disclosure

FIRST REPORT – JANUARY 2009

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EXECUTIVE SUMMARY

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Introduction

This is the first report of the Guidelines Monitoring Group (the 'Group') established to review the private equity industry's conformity with the Walker Guidelines as well as keeping the Guidelines under review and making recommendations for changes when necessary. The Group's aim is to guide and assist the industry in evolving to a position of best practice over a period of time through annual reviews of conformity. This report summarises the actions of the Group to achieve that and the performance of the industry in its first year under the Guidelines. The Guidelines will also evolve over time and the Group's recommendations for changes to be implemented by the British Private Equity and Venture Capital Association (the 'BVCA') after due consultation will be the subject of a separate report in the spring of this year.

The Guidelines

In February 2007 the British Private Equity and Venture Capital Association asked Sir David Walker to undertake an independent review of the adequacy of disclosure and transparency in private equity with a view to recommending a set of guidelines for conformity by the industry on a voluntary basis. This review culminated in November 2007 with the publication of the Guidelines for Disclosure and Transparency in Private Equity (the "Guidelines" attached as appendix 3).

The Guidelines require additional disclosure and communication by private equity firms and their portfolio companies where such portfolio companies had more than 1,000 UK employees, generate more than 50% of their revenues in the UK and either had an enterprise value of more than £500 million when acquired by one or more private equity firms or, in the case of a public to private transaction, had a market capitalisation together with premium for acquisition of control of more than £300 million.

The principal recommendations of the Guidelines for enhanced disclosure by portfolio companies are that:

- The audited report and accounts should be readily accessible on the company website no more than six months after the company year end.
- The report should identify the private equity fund or funds that own the company and provide details of the composition of the board.
- The financial review should cover risk management objectives and policies in the light of the principal financial risks and uncertainties facing the company with links to the appropriate detail in the footnotes to the accounts.
- The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including the Enhanced Business Review requirements that are ordinarily applicable only to quoted companies.

The principal recommendations of the Guidelines for communication by private equity firms are that:

- A private equity firm should publish an annual review or provide information on its website which describes the way the FSA-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.

- The review should include a commitment to conform to the Guidelines, provide a description of the companies in the private equity firm's portfolio and provide a categorisation of the limited partners in the fund or funds including a geographic categorisation and a breakdown by type of investor.

The Guidelines also include requirements for valuation methods and reporting to limited partners, data to be provided by portfolio companies and private equity firms to the industry association and a responsibility to ensure timely and effective communication during a period of significant strategic change.

The Guidelines further recommended that the BVCA should establish a Guidelines Review and Monitoring Group to review conformity and to ensure that the Guidelines remain appropriate in the light of changing conditions.

Performance of portfolio companies

The Guidelines recommended that the BVCA should commission research into the trading performance of portfolio companies and attribution analysis in respect of exits. The BVCA commissioned Ernst & Young to assist them with this research, the results of which will be published in a separate report. The Guidelines recommended that data should be collected for the preceding calendar or financial year. In order to enhance the value of the data and increase the population of companies covered, the BVCA commissioned research that collected data for the three preceding years.

The Group has reviewed the report and the basis under which it was prepared and notes that all the private equity firms and portfolio companies required to provide data did so and, in providing three years' data, went beyond the requirements of the Guidelines. The results of the research are clearly relevant but the data set may still not be large enough for substantive conclusions to be drawn. The report is based on data up to 31 December 2007 and therefore does not reflect the impact of the significant changes in the economic environment that occurred during 2008.

Guidelines Monitoring Group

The Group was established in March 2008 to provide oversight on disclosure issues relating to portfolio companies that qualify for enhanced reporting and the private equity firms that own them.

The Group is chaired by Sir Michael Rake, Chairman of BT Group plc. He is supported by two independent members: Alan Thomson, former Group Finance Director of Smiths Group and Jeannie Drake, former Deputy General Secretary of the CWU (The Communications Workers Union). Representing the private equity industry are: Robert Easton, Managing Director at The Carlyle Group and David Blitzer, Senior Managing Director at Blackstone Group.

Following its establishment the Group has undertaken, in conjunction with the BVCA, a review to identify the private equity firms and their portfolio companies that meet the criteria set out in the Guidelines. Thus far, 32 private equity firms and 54 portfolio companies have agreed to comply with the Guidelines.

Subsequent to this review the Group appointed PricewaterhouseCoopers LLP, Chartered Accountants ("PricewaterhouseCoopers"), to assist it by reviewing the disclosures made by the private equity firms and a sample of their portfolio companies with year ends of December 2007 and March 2008. This report summarises the findings of that

exercise along with the Group's own review of the other requirements of the Guidelines. Recommendations for changes in the Guidelines will be the subject of a separate report in the spring of this year.

Private equity firms and portfolio companies

Details of the private-equity firms and portfolio companies that have agreed to comply with the Guidelines are set out in appendices 1 and 2.

The private equity firms include 29 members of the BVCA including two "private equity-like" organisations (Dubai International Capital and Arcapita) and three non-members (HBOS, Macquarie and PAI Partners).

The Group and the BVCA have initiated 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. Initial responses to such discussions have been positive.

Half of the portfolio companies strictly meet all the criteria set out in the Guidelines and the remainder have participated on a voluntary basis. The Group and the BVCA are also in discussions with both existing private equity firms and potential voluntary participants to encourage further voluntary participation by their portfolio companies.

Review of conformity

Overview

There has been a high level of support for, and commitment to, the Guidelines from the industry and a substantial majority of the portfolio companies reviewed have made good or acceptable disclosures with only a limited number of exceptions. Nevertheless, as one might expect in the first year, the nature of disclosure varies significantly. It should also be noted that the Guidelines require portfolio companies to adopt the requirements of the Enhanced Business Review (Section 417(5) of the Companies Act 2006) a year earlier than is required for listed companies.

The Group's review process involved significant engagement with the private equity firms to ensure that the requirements were clearly communicated and to provide guidance on areas of exception to the Guidelines. In addition, the Group has written to each of the reviewed portfolio companies' private equity firm owners setting out recommendations for improvements to the disclosures in the annual report and accounts. The private equity firms have been universally positive in their responses and have either made the suggested amendments or committed to do so in the next annual accounts as appropriate.

This was the first year in a process where best practice will evolve over time. The efforts made by the private equity industry so far are therefore encouraging, but improvement in some areas is both possible and necessary.

Portfolio companies

The review assessed portfolio companies' disclosures in relation to: the additional disclosures required by the Guidelines, the pre-existing Companies Act disclosure requirements for the Business Review and the requirements of the Enhanced Business Review. This year's review considered a sample of 30 portfolio companies with December 2007 and March 2008 year ends. Key findings from the review of those companies are that:

- Requirements in the Guidelines to provide information about the private equity firm and the composition of the board and to include a financial review were met in almost all cases although some companies did not include all the required details on

the composition of the board. Where information was erroneously omitted this has been acknowledged and will be corrected.

- All of the companies included a Business Review. In assessing the quality of disclosure made in the Business Reviews the Group has separately considered the pre-existing Companies Act Requirements and the requirements of the Enhanced Business Review:
 - Pre-existing Companies Act requirements relating to the business review, risks and uncertainties and the financial position of companies were generally well met. The business reviews and, in particular, the use of key performance indicators ('KPIs') could in some cases benefit from a greater degree of quantification and could be more integrated with the rest of the report.
 - The requirements of the Enhanced Business Review are being adopted on a voluntary basis a year before listed companies are required to do so and therefore do not benefit from the example of existing best practice. Most of the companies addressed each of the requirements of the Enhanced Business Review. The reviews could benefit from a greater degree of detail and quantification and could link the narrative in the annual reviews more clearly to the financial statements.

Overall, the Group considers that only a small number of companies have not met the Guidelines' enhanced disclosure requirements to a satisfactory degree. The Group has written to the private equity firm owners of each of these companies requesting specific confirmation of what actions would be taken to address the exceptions and have received responses committing to address the identified exceptions in respect of all of the companies.

Private equity firms

The review also assessed the conformity of the disclosures made by the private equity firms in their annual reports or otherwise on their websites.

The review initially found that half the firms met all the requirements without exception. The Group has communicated with each of the private equity firms that had exceptions to recommend amendments to achieve full conformity. The private equity firms welcomed this guidance and have all agreed to make the suggested amendments.

Other requirements

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

Future activities of the Group

The Group was established for the purpose, inter alia, of ensuring that the guidelines remain appropriate in changing market and industry circumstances. Accordingly, and in the light of the findings of this year's review, the Group will meet to consider any recommendations for changes to be implemented by the BVCA after due consultation and such recommendations will be published in the spring of this year.

INTRODUCTION

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The Guidelines for Disclosure and Transparency in Private Equity (the 'Guidelines') issued in November 2007 recommended that a group should be established to ensure the Guidelines remain appropriate in the light of changing conditions and to monitor conformity with the Guidelines.

The Guidelines Monitoring Group (the 'Group') was established in March 2008 for this purpose and this report is the first report of the Group. The Group's aim is to guide and assist the industry in evolving to a position of best practice over a period of time through annual reviews of conformity.

This report summarises the actions of the Group to achieve that and the performance of the industry in its first year under the Guidelines, in particular the requirements for private equity firms and their portfolio companies to make information about them publicly accessible. The report summarises the Guidelines, the process undertaken by the Group and comments on the level of conformity achieved regarding:

- Communication by a private equity firm
- Disclosure by a portfolio company
- Other requirements and recommendations

The Group was also established 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. Following the publication of this report the Group will consider appropriate recommendations and these will be the subject of a separate report in the spring of this year.

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GUIDELINES FOR DISCLOSURE AND TRANSPARENCY IN PRIVATE EQUITY

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

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

Definitions

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

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

A portfolio company is an UK company:

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

Content and timing of enhanced reporting by portfolio companies

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

- The report should identify the private equity fund or funds that own the company and provide details of the composition of the board.
- The financial review should cover risk management objectives and policies in the light of the principal financial risks and uncertainties facing the company with links to the appropriate detail in the footnotes to the accounts.
- The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including the Enhanced Business Review requirements that are ordinarily applicable only to quoted companies.

Additionally, portfolio companies should publish a summary mid-year update no later than three months after mid-year giving a brief account of major developments in the

company and should provide data to the BVCA in support of its enhanced role in data collection, processing and analysis.

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

Additionally, private equity firms should, in their reporting to limited partners, follow established guidelines, such as those published by the European Private Equity and Venture Capital Association ('EVCA'), follow established guidelines in the valuation of their assets; and should provide data to the BVCA in support of its enhanced role in data collection, processing and analysis. Private equity firms should also commit to ensure timely and effective communication with employees, either directly or through its portfolio company, as soon as confidentiality constraints are no longer applicable.

Recommendations for initiative by the BVCA

The Guidelines also recommended that the BVCA should:

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

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GUIDELINES MONITORING GROUP

Composition of the Group

The Group was established in March 2008 to provide oversight on disclosure issues relating to portfolio companies that qualify for enhanced reporting and the private equity firms that own them.

The Group is chaired by Sir Michael Rake, Chairman of BT Group plc. He is supported by two independent members: Alan Thomson, former Group Finance Director of Smiths Group and Jeannie Drake, former Deputy General Secretary of the CWU (The Communications Workers Union). Representing the private equity industry are: Robert Easton, Managing Director at The Carlyle Group and David Blitzer, Senior Managing Director at Blackstone Group.

Following its establishment the Group has undertaken the following activities:

- In conjunction with the BVCA the Group undertook a process to identify private equity firms and their portfolio companies that meet the criteria set out in the Guidelines (further details are set out below).
- The Group appointed PricewaterhouseCoopers to assist the Group in reviewing the disclosures made by private equity firms and a sample of their portfolio companies with December 2007 or March 2008 year ends (the findings of the review are summarised in section 5).
- Following that review process and in conjunction with both the BVCA and PricewaterhouseCoopers the Group has communicated any exceptions or areas of potential improvement identified during that review to the relevant private equity firms and received appropriate commitment to correct any such exceptions.
- In conjunction with the BVCA the Group has also reviewed the other requirements and recommendations of the Guidelines (see section 5.4).
- Alongside this review process the Group and the BVCA have initiated discussions with private equity-like firms to encourage their voluntary participation.

Private equity firm and portfolio company population

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

Private equity firms

32 private equity firms have agreed to comply with the Guidelines. This represents the full population of private equity firms that meet the criteria and reflects the willingness to participate that the Group encountered during the identification process.

In addition, this population includes two private equity-like members of the BVCA that are not strictly covered by the Guidelines being, Arcapita and Dubai International Capital. Three non members have also participated on a voluntary basis, the banks HBOS and Macquarie and the French private equity firm PAI Partners. The Group expects that the example of these private equity-like firms and the continuing discussions with other

private equity-like firms, including sovereign wealth funds, will result in further voluntary participation by firms and their portfolio companies in future.

Portfolio companies

A total of 54 portfolio companies meet the definitions of the Guidelines or have been volunteered for compliance by the relevant private equity firms. Half of the portfolio companies strictly meet the criteria set out in the Guidelines and the remainder have participated on a voluntary basis. This population has evolved during the year and details of movements are set out in appendix 2. As the review of conformity covers December 2007 and March 2008 year ends, acquisitions of portfolio companies during 2008 are not included in this population but, if they meet the criteria or volunteer, will be included for the next review cycle.

Future activities of the Group

The Group's review activities are intended to assist the industry in moving towards a position of best practice over time. Accordingly, there will be further reviews of the disclosures made by private equity firms and portfolio companies to ensure that recommendations made to them are implemented, that additions to the private equity firm population are reviewed and that the full population of portfolio companies is covered by rotation of the review sample.

The Group was also established for the purpose, inter alia, of ensuring that the Guidelines remain appropriate in changing market and industry circumstances. Accordingly, and in the light of the findings of this year's review, the Group will consider any recommendations for changes to be implemented by the BVCA after due consultation and such recommendations will be published in the first part of 2009.

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REVIEW OF CONFORMITY WITH THE GUIDELINES

5.1 OVERVIEW

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

- Communication by a private equity firm: essentially the requirement to make information about the firm available in an annual report or otherwise on the firm's website.
- Disclosure by a portfolio company: the requirements to make accounts and mid-year updates available and for the accounts to meet enhanced disclosure requirements.
- 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.

Overall, there has been a high level of support for, and commitment to, the Guidelines from the industry and a universal commitment to make the required disclosures. The following sections comment in more detail, but in summary half of the private equity firms initially met all their disclosure requirements without exception and a majority of portfolio companies reviewed made good or acceptable disclosures with only a limited number of exceptions. Nevertheless, as one might expect in the first year, the nature of disclosure varied significantly.

The Group's review process involved significant engagement with the private equity firms to ensure that the requirements were clearly communicated and to provide guidance on areas of exception to the Guidelines. In addition the Group has written to each of the reviewed portfolio companies' private equity firm owners setting out recommendations for improvements to the disclosures in the annual report and accounts. The private equity firms have been universally positive in their responses and have either made the suggested amendments or committed to do so in the next annual accounts as appropriate.

This was the first year in a process where best practice will evolve over time. The efforts made by the private equity industry so far are therefore encouraging, but improvement in some areas is both possible and necessary.

5.2 COMMUNICATION BY A PRIVATE EQUITY FIRM

Overview

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

The requirement allows firms either to prepare a separate annual report or include the information generally within the firm’s website. Firms adopted these approaches broadly evenly amongst the population.

The Group’s initial review found that conformity was high with half the firms meeting all the requirements although some firms needed to be reminded that the requirement applied even if no portfolio companies were owned. Following the initial review, the Group contacted each firm to provide details of any exceptions to the requirements. The private equity firms welcomed this guidance and have all agreed to make the suggested amendments. Further details of the findings of the review are detailed below.

Description of the firm

Requirement

“a description of the way in which the FSA-authorized entity fits into the firm of which it is a part with an indication of the firm’s history and investment approach, including investment holding periods, where possible illustrated with case studies”

Findings

Almost all of the firms complied with this requirement. The most common exception was not to explicitly provide any information on investment holding periods. This requirement was met by firms who provided details of realised investments including the dates of acquisition and disposal and some firms provided details of average holding periods and extensive case studies.

The requirement to provide a description of the way in which the FSA-authorized entity fits into the firm of which it is a part was primarily aimed at firms with other activities in addition to their private equity activities. Firms whose only activity is private equity generally met this requirement by explaining the relationship between the FSA-authorized private equity firm and the fund or funds that it managed on behalf of investors.

Commitment to conform

Requirement

“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”

Findings

Almost all the firms made a commitment to comply with the requirements although the form of wording varied considerable and not all explicitly made the commitment to conform on “comply or explain basis” or “to promote conformity on the part of the portfolio companies”. Where no commitment was made this been acknowledged and has or will be corrected.

Leadership of the firm

Requirement

"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"

Findings

All the firms provided information about the leadership of the firm and its UK presence. In some cases the UK leadership structure was not clearly presented but could be inferred from team and contact details on the website.

About a third of firms initially omitted a statement confirming that arrangements were in place for conflicts of interest. A small number of firms went beyond a statement and provided details of the arrangements that were in place.

Portfolio companies

Requirement

"a description of UK portfolio companies in the private equity firm's portfolio"

Findings

All the firms met this requirement.

Limited partners

Requirement

"a categorisation of the limited partners in the funds or funds that invest or have a designated capability to invest in companies that would be UK portfolio companies for the purposes of these guidelines, indicating separately a geographic breakdown between UK and overseas sources and a breakdown by type of investor, typically including pension funds, insurance companies, corporate investors, funds of funds, banks, government agencies, endowments of academic and other institutions, private individuals, and others"

Findings

More than three quarters of firms initially met this requirement. Some of the firms do not have conventional limited partner structures because they are captive private equity divisions of other organisations or are subsidiaries funded by their parent company. These organisations have agreed to provide a description of their funding arrangements.

The review also found a number of firms whose initial geographical categorisation provided details of European limited partners rather than UK limited partners which did not meet the requirement. Some firms provided the analysis both by value and by number of investors.

5.3 DISCLOSURE BY A PORTFOLIO COMPANY

Overview

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

All but two of the portfolio companies with December 2007 or March 2008 year ends made their report and accounts available. These two companies, which met other requirements such as the provision of data to the BVCA, will publish accounts for the December 2008 year end. In addition, a number of companies prepared their accounts before volunteering to comply with the Guidelines but have made them available in the form originally prepared.

To assess the extent of conformity with the enhanced disclosure requirements for the annual report and accounts the Group, assisted by PricewaterhouseCoopers, reviewed a sample of 30 sets of accounts with December 2007 or March 2008 year ends (which represents over 75% of the portfolio companies with December or March year ends). In assessing conformity the requirements can be considered in three areas:

- Walker 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 risk and the use of key performance indicators.
- Enhanced Business Review: the additional requirements that are being adopted a year before listed companies are required to do so comprising information on trends and factors affecting future performance, environmental, matters, employees, social and community issues and details of essential contractual arrangements.

Overall, the Group considers that seven companies have not met the Guidelines' enhanced disclosure requirements to a satisfactory degree. Each of these companies had exceptions to, or poor disclosures in, a significant number of the individual disclosures requirements assessed by the Group and in particular those included within the Enhanced Business Review. The Group has written to the private equity firm owners of each of these companies requesting specific confirmation of what actions would be taken to address the exceptions and has received responses committing to address the identified exceptions in respect of all of the companies.

Walker Guidelines specific

Requirements

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

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

Compliance with the financial review - position of the entity at the year end requirements should include an explanation of the year-end debt and capital structure of the company, its funding requirements and discussion of the overall risk management objectives and policies of the company, including in relation to the company's leverage.

Findings

The basic requirement to disclose the name of the private equity firm was met by 90% of the sample. Two companies referred to the private equity house in commentary within the report, but did not include an explicit statement that this was the private equity firm that controlled the company. A number of companies went further than the basic requirement and also disclosed the name of the managed fund within the private equity house as well as that of the private equity house itself.

All but eight of the companies reviewed provided adequate details of the composition of the board. Those that didn't generally limited their disclosure to the Companies Act requirement to disclose the directors of the company. The companies that did meet the requirement did so in a number of ways: some included full biographies of each director, including areas of expertise, similar to the reporting format adopted by public companies. Others included a list of directors with a footnote explaining who is from the private equity firm.

All but one of the companies met the requirement for a financial review and half of the companies' disclosure in this area was particularly good. However, not all companies reconciled the non-GAAP measures they had used to the statutory numbers included within the financial statements or defined them and discussions of financial risks were often at a high level and not always company specific.

Business Review (required by UK Companies Act)

Requirement

"The business review must contain a fair review of the company's business and a description of the principal risks and uncertainties facing the company. 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"

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

- A statement of company strategy setting out what the company is trying to achieve and the priorities for how it plans to achieve those objectives.
- A description of the market in which the company operates should be given as well as how the competitive, regulatory and macro-economic forces impact on the business.
- An explicit identification of the principal risks and uncertainties facing the company and avoid a long list of boiler-plate risks.
- An explicit identification of the Key Performance Indicators (KPIs) so as to avoid any misunderstanding or, at the very least, provide performance data, from which a reader might reasonably identify their KPIs. KPIs should include both financial and non-financial KPIs.

In addition, the statement of strategy should be clear and prominent and the risks and uncertainties should be aligned with the strategy. Disclosure should include quantification through the use of the KPIs which should be defined and the choice of KPIs explained.

Findings

These requirements already applied to the companies. As one would expect of a pre-existing requirement, conformity in this area was high with no company having more than one exception to the individual requirements.

- Strategy and market environment were well addressed with only one exception each. However, only a few companies used the description of strategy to underpin the rest of the report.
- Only two companies did not discuss principal risks and uncertainties. For a small number of companies the risks had to be inferred from other information provided rather than being explicitly identified. Otherwise, this was an area of good disclosure.
- There were no exceptions to the requirement for financial KPIs with more than half the companies clearly aligning their KPIs with their strategy. Non financial KPIs were not as well addressed with four exceptions where non financial KPIs were not provided and no explanation as to why they were not appropriate was given. It is recognised that the use of non financial KPIs to manage the companies involved varies significantly but this is an area where conformity on a “comply or explain” basis could be improved.

Overall, these areas could be improved through greater inclusion of quantifiable evidence and better integration of strategies, risks and KPIs. Additionally, not all companies identified mitigants for the risks identified.

Enhanced Business Review

Requirement

“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 environmental matters (including the impact of the company’s business on the environment), the company’s employees and 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) information about persons with whom the company has contractual or other arrangements which are essential to the business of the company.”

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. 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. 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, development and retention practices. 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. Details of essential contractual

arrangements should identify the parties and arrangements involved and not just provide details of supplier payment policies and creditor days.

Findings

The requirements of the Enhanced Business Review are being adopted on a voluntary basis a year before listed companies are required to do so and therefore do not benefit from examples of existing best practice. Most of the companies addressed the Enhanced Business Review requirements but the quality varied significantly with a third of the companies having at least one exception to the individual requirements.

- Three companies did not provide information on trends and factors affecting the future. More generally, the content of annual reports tended to be historical in focus and would benefit from greater discussion of future performance and current market trends.
- All companies disclosed information on employees but detailed quantifiable evidence was limited and in some cases disclosures did not go beyond Companies Act requirements. Two companies did not provide any information on environmental factors affecting the company. A number of companies published separate Corporate and Social Responsibility reports which is acceptable where there is a specific reference in the annual report and accounts. Social and community issues were less well addressed with seven exceptions. This is an area with limited current guidance and the BVCA is engaging with its members to provide further guidance in this area.
- Information about contractual and other arrangements tended to be spread throughout the report and accounts rather than being provided under a specific heading. There were six exceptions in this area. Where companies do not have any contractual or other arrangements that are essential to the business, this should be clearly stated.

5.4 OTHER REQUIREMENTS AND RECOMMENDATIONS

Introduction

The Guidelines included 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. It also made recommendations for the industry association regarding research capabilities and activities, engagement with private equity-like entities and fund performance measurement.

Other reporting and communication requirements

The Group notes the following in respect of these requirements:

- The private equity firms and their portfolio companies have cooperated fully with the BVCA in collating information for a research report being prepared by the BVCA and Ernst & Young on performance and attribution analysis for Walker guideline portfolio companies and exits.
- The private equity firms apply guidelines published by the International Private Equity and Venture Capital Board ('IPEV') or by the Private Equity Industry Guidelines Group ('PEIGG') or, in the case of public companies, applicable accounting standards.
- Where portfolio companies have undergone significant strategic change the private equity firms have confirmed that they ensured timely and effective communication.

Performance of portfolio companies

The Guidelines recommended that the BVCA should commission research into the trading performance of portfolio companies and attribution analysis in respect of exits. The BVCA commissioned Ernst & Young to assist them with this research, the results of which will be published in a separate report. The Guidelines recommended that data should be collected for the preceding calendar or financial year. In order to enhance the value of the data and increase the population of companies covered, the BVCA commissioned research that collected data for the three preceding years.

The Group has reviewed the report and the basis under which it was prepared and notes that all the private equity firms and portfolio companies required to provide data did so and, in providing three years' data, went beyond the requirements of the Guidelines. The results of the research are clearly relevant but the data set may still not be large enough for substantive conclusions to be drawn. The report is based on data up to 31 December 2007 and therefore does not reflect the impact of the significant changes in the economic environment that occurred during 2008.

Engagement with private equity-like entities

The Group and the BVCA have initiated 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. Initial responses to such discussions have been positive.

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 methodology for the content and presentation of fund performance information.

The BVCA appointed a Chief Economist in October 2008 and has established a Research Advisory Board to boost its research capabilities and has subsequently initiated discussions with other trade associations in a number of areas including fund performance measurement.

A1

APPENDIX 1: PRIVATE EQUITY FIRMS

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

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

* Not a member of the BVCA

Private equity-like entity

APPENDIX 2: PORTFOLIO COMPANIES

A2

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

Required portfolio companies

PORTFOLIO COMPANY	OWNERS
Acromas (AA / Saga) *	Charterhouse / CVC / Permira
Alliance Boots *	KKR
Arqiva	Macquarie
Brakes Group *	Bain Capital
Domestic and General Group *	Advent
DX Group	Candover
Enterprise plc *	3i
Equiniti #	Advent
Gala Coral	Cinven / Candover / Permira
Gondola Holdings	Cinven
Merlin Entertainments Group *	Blackstone / Dubai IC
Moto	Macquarie
National Car Parks	Macquarie
National Grid Wireless	Macquarie
NCP Services #	3i
New Look *	Permira / Apax
Odeon & UCI Cinemas Ltd *	Terra Firma
Osprey (AWG) *	3i
Partnerships in Care Limited *	Cinven
Phones4U *	Providence
PHS *	Charterhouse Capital Partners LLP
Thames Water *	Macquarie
Travelodge *	Dubai International Capital
United Biscuits *	Blackstone / PAI
Viridian Group *	Arcapita / Electricinvest
Wales & West Utilities *	Macquarie
Weetabix *	Lion Capital

Voluntary portfolio companies

PORTFOLIO COMPANY	OWNERS
2e2 *	Duke Street
Accantia *	Duke Street
Airwave Solutions Ltd	Macquarie
Annington Homes Ltd	Terra Firma
Associated British Ports *	GS Capital Partners
Autobahn Tank & Rast Holding GmbH	Terra Firma
AWAS	Terra Firma
Birds Eye Igloo *	Permira
Center Parcs	Blackstone
Deutsche Annington Immobilien GmbH	Terra Firma
Emap (as part of Guardian Media Group)	Apax
EMI Group *	Terra Firma
General Healthcare Group	Apax
HIT Entertainment	Apax
IMO Car Wash *	Carlyle
Incisive Media *	Apax
Infinis Ltd	Terra Firma
Kellen Group (Phoenix Natural Gas) Ltd *	Terra Firma
Kwik-Fit Group Limited *	PAI
Lakeside 1 Ltd (Keepmoat) *	HBOS
McCarthy and Stone Group Ltd	HBOS
Northgate Information Solutions	KKR
QMH Limited	GS Capital Partners
Spire Healthcare (was BUPA hospitals) *	Cinven
Trader Media (as part of Guardian Media Group)	Apax
Tragus	Blackstone
Travelex *	Apax

* December 2007 or March 2008 accounts reviewed this year

Committed to meet disclosure requirements from December 2008

Additions and deletions

- Center Parcs, QMH Limited and Tragus are all voluntary additions to the population subsequent to publication of the initial list
- NCP Services is a required company identified after the initial list
- Somerfield has been removed from the list following the announcement of its sale to Co-op
- David Lloyd, House of Fraser, De Vere Group and Wyevale Garden Centres have been removed from the list as HBOS does not hold majority interests or control the businesses

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

A3

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:

A UK company

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

4. Content of enhanced disclosure by a portfolio company

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

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

c) The report should include a business review that substantially conforms to the provisions of Section 417 of the Companies Act 2006 including sub-section 5 (which is ordinarily applicable only to quoted companies). Section 417 is reproduced at Annex D below, sub-section 5 provides: “(5) In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company’s business, include-

a) the main trends and factors likely to affect the future development, performance and position of the company’s business; and

b) information about—

- (i) environmental matters (including the impact of the company’s business on the environment),
- (ii) the company’s employees, and
- (iii) social and community issues,

including information about any policies of the company in relation to those matters and the effectiveness of those policies; and

c) subject to subsection (11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company. If the review does not contain information of each kind mentioned in paragraphs (b)(i), (ii) and (iii) and (c), it must state which of those kinds of information it does not contain.”

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

e) To the extent that the guidelines at (b) and (c) above are met by existing market disclosures in respect of debt or equity issuance on public markets, this should be explained with the relevant material made accessible on the company’s website; and where compliance with these guidelines, in particular in respect of any forward-looking statement, might involve conflict with other regulatory obligations, the reason for non-compliance should similarly be explained on the company website.

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

a) The audited report and accounts should be readily accessible on the company website;

b) The report and accounts should be made available no more than 6 months after the company year-end;

c) A summary mid-year update giving a brief account of major developments in the company (but not requiring updated financial statements) to be placed on the website no more than 3 months after mid-year.

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

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

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

7. Communication by a private equity firm

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

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

8. Reporting to limited partners

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

- a) follow established guidelines such as those published by EVCA (or otherwise provide the coverage set out in such guidelines) for the reporting on and monitoring of existing investments in their funds, as to the frequency and form of reports covering fund reporting, a summary of each investment by the fund, detail of the limited partner's interest in the fund and details of management and other fees attributable to the general partner (a summary of the EVCA guidelines is at Annex E).
- b) value investments in their funds using either valuation guidelines published by the International Private Equity and Venture Capital Board (IPEV) or those published by the Private Equity Industry Guidelines Group (PEIGG) or such other standardised guidelines as may be developed in future.

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

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

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

10. Responsibility at a time of significant strategic change

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

APPENDIX 4: RECOMMENDATIONS FOR INITIATIVE BY THE INDUSTRY ASSOCIATION

A4

These recommendations for initiative by the BVCA cover:

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

A. Reporting and intelligence

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

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

B. Guidelines review and monitoring

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

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

2. Composition of the Group:
 - a) a Chairman with substantial experience but independent of private equity
 - b) total size of 5 to include 2 executives of GPs or advisers to funds investing in portfolio companies covered by the guidelines
 - c) 2 independent members additionally to the Chairman with substantial professional or business experience
 - d) thus a majority of independents.
3. Appointment of the Group:
 - a) to be appointed by the Chairman and Council of the BVCA on the advice of a Nominations Committee of the Council
 - b) the Chairman of the Group to have a term of 3 years with provision for appropriate rotation of other members to ensure continuity
 - c) the Chairman and members to be paid an appropriate fee.
4. Operations of the Group:

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

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

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

C. Engagement with “private equity-like” entities

1. The BVCA should identify entities whose business, though not requiring authorisation by the FSA, is similar to that of the private equity firms covered by these guidelines, to include in particular the UK affiliates of sovereign wealth funds and other major principal or proprietary investors whose funding is not dependent on limited partners.
2. The BVCA should initiate discussion with such groups (where appropriate, in the case of sovereign wealth funds, after consultation with government) with the purpose of enlisting their voluntary undertaking to conform to the guidelines, on the basis that this will be in their own interest as a manifest of their commitment to established good practice as to disclosure and transparency in such business conducted in the UK.

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

D. Fund performance measurement

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

APPENDIX 5: EXTRACT FROM COMPANIES ACT, 2006

A5

Section 417 Contents of directors' report: business review

1. Unless the company is subject to the small companies' regime, the directors' report must contain a business review.
2. The purpose of the business review is to inform members of the company and help them assess how the directors have performed their duty under section 172 to promote the success of the company.
3. The business review must contain:
 - a) a fair review of the company's business, and
 - b) a description of the principal risks and uncertainties facing the company.
4. The review required is a balanced and comprehensive analysis of:
 - a) the development and performance of the company's business during the financial year, and
 - b) the position of the company's business at the end of that year, consistent with the size and complexity of the business.
5. In the case of a quoted company the business review must, to the extent necessary for an understanding of the development, performance or position of the company's business, include:
 - a) the main trends and factors likely to affect the future development, performance and position of the company's business; and
 - b) information about:
 - i) environmental matters in
 - ii) the company's employees, and
 - iii) social and community issues, including information about any policies of the company in relation to those matters and the effectiveness of those policies; and
 - c) subject to subsection 11), information about persons with whom the company has contractual or other arrangements which are essential to the business of the company. If the review does not contain information of each kind mentioned in paragraphs b)i), ii) and iii) and c), it must state which of those kinds of information it does not contain.

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

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GUIDELINES
MONITORING 