Private Equity: UK Guidelines Monitoring Group Publishes Guidance on Good Practice Reporting by Portfolio Companies

On 6 June 2011, the UK Guidelines Monitoring Group ("GMG"), the body set up to monitor the performance of private equity firms and their portfolio companies against the guidelines for disclosure and transparency in private equity produced by Sir David Walker in November 2007 ("Walker Guidelines"), produced guidance (the "Guidance") to assist private equity owned portfolio companies in complying with the Walker Guidelines.

The GMG noted that there has been continued improvement in conformity with the Walker Guidelines by private equity firms and portfolio companies since its first report was issued in January 2009, and that there continues to be a high level of commitment to the Walker Guidelines from the private equity industry. Nonetheless, the GMG feels that improvement is still possible in some areas, and the aim of the Guidance is to help portfolio companies to comply with the Walker Guidelines via improved levels of transparency and disclosure. To this end, the Guidance sets out not simply an analysis of the detailed requirements of the Walker Guidelines, but also sets out the basic compliance required to meet each requirement, along with good practice examples taken from actual company disclosures.

The Guidance covers three broad areas of portfolio company disclosures: Walker Guidelines specific; business review (required by the Companies Act 2006); and enhanced business review. These areas are further analysed into 14 specific criteria, covering such aspects as the identity of the private equity firm owning the portfolio company, the composition of the board, the financial review, the principal risks and uncertainties facing the company, key performance indicators, trends and factors affecting the company's future development, information about the company's employees, and essential contractual or other arrangements.

Private equity firms and their portfolio companies are likely to find the good practice examples particularly helpful, in that they in effect set out what the GMG regards as appropriate compliance with the Guidelines. So, for example, whilst it is enough for basic compliance to provide the identity of the private equity firm managing the fund that owns the portfolio company and highlight which of the directors of the company were directors of or had been appointed by the private equity firm, good practice would also disclose the name of the fund, give some background information on the private equity firm putting its role into context, and include explanations of the industry and other relevant experience of the external directors, as well as their other directorships. This suggests that the GMG regards 'basic compliance' as being a standard that, over time, will not be compliant, and that private equity firms and their portfolio companies should aim for the 'good practice' standard instead. It is perhaps revealing in this context that the GMG refers to companies who meet the good practice standard as 'better companies'.

Whilst the GMG has no enforcement powers and thus no ability to impose sanctions on firms or portfolio companies who act contrary to the Walker Guidelines, they could 'name and shame' those who failed to comply, and this could have a significant negative impact upon the firm or company concerned. Indeed, the Guidance highlights that the GMG has identified explicit disclosures around essential contracts as typically a poor area of overall reporting, and where significant improvement going forward will be necessary to demonstrate compliance. The sub-text would appear to be that if that improvement in reporting is not forthcoming, the GMG will publicise that fact — which, as noted above, could include identification of those who fail to comply. It will be interesting to see whether in their next annual report, due in December 2011, the GMG identifies any improvements in this and other areas covered by the Guidance.

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