



February 2009

InVest

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General News

Report On Performance Of Private Equity-backed Companies

The British Private Equity and Venture Capital Association (**BVCA**), in association with Ernst & Young, published its first annual report on the performance of the largest UK companies owned by private equity firms as recommended by the Walker Guidelines for Disclosure and Transparency in Private Equity.

The report analysed 28 portfolio companies that met all of the Walker Guidelines criteria at 31 December 2007 and a further 14 companies which exited over the period 2005-2007 and met the criteria. The 14 exits form the basis for the returns attribution analysis component of the report.



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The key findings include:

- As at 31 December 2007, there were 28 Portfolio Companies, i.e., that met the three criteria in the Walker Guidelines, and a further 14 Portfolio Exits, i.e., companies that been exited over the period 2005-07 and met all criteria.
- The 28 Portfolio Companies were acquired for an aggregate £56bn in enterprise value, funded by £15bn of equity invested and £41bn of third party debt. The 14 Portfolio Exits were acquired for an aggregate £18bn in enterprise value.
- The Portfolio Companies, and Portfolio Exits, have grown profits organically by c7% per annum under the period of ownership by Private Equity firms, excluding the effect of acquisitions and disposals.
- 252,000 of the 283,000 jobs at the Portfolio Companies, based on latest year end data, were in the UK, representing 25% of employment by Private Equity invested firms in the UK, and c1.5% of total private sector employment.

The report can be accessed via the BVCA [website](#). (Source: *BVCA press release, 14 January 2008*) - [Back↑](#)

FSA Consumer Purchasing And Outcomes Survey

On 29 January 2008 the FSA published the results of its consumer purchasing and outcomes survey. The Report explains that under the first of its strategic aims, 'to help retail consumers achieve a fair deal', the FSA has committed to ensuring that consumers receive and use clear, simple and relevant information from the industry and from the FSA.

The Consumer Purchasing Survey was commissioned to provide information in relation to this objective.

Please click [here](#) for a copy of the report. (Source: *FSA Consumer purchasing and outcomes survey, January 2009*) - [Back↑](#)

FSA Publishes Research On Financial Crime

The Financial Services and Markets Act (**FSMA**) requires the FSA to consider firms' awareness of their financial crime risks. For this reason the FSA regularly

commissions research among its stakeholders to assess their views on financial crime, current policy and practice and the FSA's effectiveness in meeting its statutory objective.

The latest research has now been made available on the FSA website. The results show that many firms (59% of large firms and 44% of small firms) believe that financial crime is increasing, albeit at a slower rate than in 2006.

Please click [here](#) for a copy of the report. (Source: *FSA Financial Crime - Stakeholder Research, January 2009*) - [Back↑](#)

FSA Handbook Development No. 107

On 23 January 2009 the FSA published Handbook Development No. 107. This newsletter contains:

- information about recent Handbook-related and other developments;
- information about recently issued Handbook-related and other publications;
- an updated timetable for forthcoming publications;
- information about Consumer publications; and
- a link to our Events web page which provides information about forthcoming conferences and training events.

Please click [here](#) for a copy of the publication. (Source: *FSA, Handbook Development No. 107, January 2009*) - [Back↑](#)

FSA Financial Crime Newsletter

On 19 January 2009 the FSA published Financial Crime Newsletter No. 19. This publication covers the following issues:

- Boiler rooms: raising consumer awareness
- Tackling mortgage fraud
- Stakeholder perceptions survey
- Small firms project update
- Data security: customer communications
- Home Office identity theft initiatives
- APACS card fraud figures



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- Enforcement actions: Aon Ltd and Sindicatum Holdings
- Philip Robinson's BBA speech

Please click [here](#) for a copy of the publication. (Source: *FSA, Financial Crime Newsletter No. 19, January 2009*) - [Back↑](#)

Regulatory Developments

FSA Review On Implementation Of MiFID

On 20 January 2009 the FSA published MiFID supervisory priorities – results of wholesale thematic review. This report sets out the results of our thematic review of firms' implementation of a number of key 'wholesale' requirements of MiFID. The wholesale priorities identified included:

- best execution;
- inducements;
- investment research;
- client classification;
- conflicts of interest; and
- senior management systems and controls.

Please click [here](#) for a copy of the report. (Source: *MiFID supervisory priorities – results of wholesale thematic review, January 2009*) - [Back↑](#)

COBS - Examples Of Good And Bad Practice

On 30 January 2009 the FSA published on its website examples of good and bad practice in relation to COBS. The examples are intended to help firms consider whether their own processes and documentation comply with the FSA rules. The examples relate to:

- COBS 4 - Financial promotions
- COBS 6 - Information about a firm and its services (IDD / menu)
- COBS 10 - The appropriateness test
- Product disclosure and key features documents (**KFDs**)

Please click [here](#) to access the FSA website. - [Back↑](#)

FSA Publishes Speeches On RDR

On 16 January 2009 the FSA published on its website two speeches in relation to its Retail Distribution Review (**RDR**):

- [The RDR: the key to our retail strategy](#). Speech given by Jon Pain, Managing Director, Retail Markets, FSA at the FSA Retail Distribution Review Seminar in Edinburgh on 15 January 2009
- [The Retail Distribution Review - practical challenges for the investment industry](#). Speech given by Dan Waters, Director of Retail Policy & Conduct Risk, FSA at the ABI Conference (Retail Distribution Review: Building a Successful Future) on 16 January 2009.

Both speakers focused on the following issues that are paramount to the RDR:

- Adviser Charging;
- Independent advice;
- Understanding the services on offer;
- Professional standards; and
- Capital requirements for personal investment firms. - [Back↑](#)

Pension Reform And Advice

On 7 January 2009 the FSA reminded financial advisers to take new pension reforms into consideration when giving advice to their clients.

The Pensions Act 2008 is planned to come into effect in 2012. The provisions in the Act will require all employers to provide a workplace pension, automatically enrol all of their employees who meet certain criteria and contribute a minimum of 3% of salary (between a lower and upper limit). The Personal Accounts Delivery Authority (**PADA**) will set up a pension scheme, known as 'Personal Accounts', which employers will be able to use to fulfil their new obligations, if they do not wish to set up or maintain their own pension provision.

The reminder clarifies that "*advisers must give their clients advice that is suitable. As part of this advisers will assess the clients' current circumstances, for example whether they have access to a pension through their employer. It is for advisers to assess the extent to which the future pension reforms are a factor*



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in the advice given to each of their clients. The extent to which they are a factor will increase, as we get closer to this implementation date and as the design of Personal Accounts becomes clearer. Advisers will need to be aware of the developments as they happen to enable them to make reasonable assumptions when giving advice."

The reminder can be found on the FSA [website](#). (Source: FSA, *website*, 7 January 2009) - [Back↑](#)

FSA Chairman Sets Out Agenda For Reforming Financial Regulation

The FSA published on its website a speech given by Adair Turner, chairman of the FSA at The Economist's Inaugural City Lecture on 21 January 2009.

In his speech Lord Turner addressed the root causes of the current global financial crisis and outlined three key long-term regulatory initiatives to reduce the probability and severity of future financial crises:

- New approaches to capital adequacy, entailing more capital held against risky trading strategies and counter-cyclical capital requirements to build up adequate buffers during good economic times, which can be drawn on in bad;
- A new liquidity regime focused not just on individual firms' liquidity but also on market-wide risk; and
- Ensuring that financial activity is regulated according to its economic substance not its legal form.

Lord Turner said that these themes would be outlined more fully in the Turner Report which will set out the changes the FSA has already made, those where there are proposals in principle but need consultation, and those where the regulator has defined objectives but needs to play a role in achieving international agreement.

Please click [here](#) to access the speech. Source: FSA [press release](#), FSA/PN/013/2009, 21 January 2009) - [Back↑](#)

Financial Reform: A Framework For Financial Stability

In January 2009 the Group of Thirty, a consultative think tank on international economic and monetary

affairs, published a report on fixing the global financial system.

The report addresses flaws in the global financial system and provides 18 specific recommendations to: improve supervisory systems by redefining the scope, boundaries, and structure of prudential regulation; enhance the role of the central banks; improve governance practices and risk management; address pro-cyclicality via capital and liquidity standards; enhance accounting practices; strengthen the financial infrastructure; and increase coordination internationally.

The project was led by Paul Volcker, Chairman, and Tommaso Padoa-Schioppa and Arminio Fraga Neto, Vice Chairmen. Please click [here](#) to read a copy of the list of recommendations. - [Back↑](#)

JMLSG Guidance On Equivalent Markets

On 21 January 2009 the JMLSG published on its website guidance on Equivalent Markets, to assist firms in determining whether they are 'equivalent' for the purposes of the money laundering directive.

The material discusses markets where there may be a presumption of equivalence, and those where such a presumption may not be appropriate without further investigation. It then discusses issues that a firm should consider in all cases when coming to a judgement on whether a particular market is, in its view, equivalent.

JMLSG explains that the Guidance has been discussed with HM Treasury and reflects their input, although it is not formal guidance that has been given Ministerial approval.

Please click [here](#) for copy of the Guidance. (Source: JMLSG *Guidance on Equivalent Markets*, 21 January 2009) - [Back↑](#)

FSA Confirms Disclosure And Model Code Obligations In Respect Of The Use Of Shareholdings As Security

Following a number of queries relating to disclosure obligations, the FSA confirmed that grants of security over shares (by the creation of a security interest such as a pledge, mortgage or charge) are covered by the disclosure requirement in its Rules. The FSA considers that this is consistent with the statements it made in 2005.

However, the FSA also recognises that whilst implementing a European regime it has become clear that there are differing approaches in some other



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Member States, based in part on local practices and structures or procedures for granting security over shares, including the circumstances in which legal title to shares transfers.

Therefore, the FSA seeks to reach a common understanding on the detail of the MAD requirements in this area with the European Commission and its counterparts in the Committee of European Securities Regulators.

In the same statement the FSA also reminds listed issuers and their PDMRs (i.e. Person discharging managerial responsibilities) that they should consider their obligations under the Model Code (Annex 1 to Chapter 9 of the Listing Rules), in particular the requirement to obtain clearance before dealing.

(Source: [FSA statement](#), FSA/PN/005/2009, 9 January 2009) - [Back](#)

CESR Statement On The Reclassification Of Financial Instruments And Other Related Issues

In October 2008, the IASB approved an amendment to IAS 39 and IFRS 7 concerning the reclassification between some categories of some financial instruments. At the same time the amendments were endorsed to be used in the European Union.

The European Commission requested, in a statement dated 15 October 2008, that the IASB and CESR begin work immediately to find appropriate solutions to the issues associated with the fair value option, embedded derivatives, insurance questions and other problem areas in IAS 39 and IFRS 7, which in CESR's view were of concern to the public interest, taking into account an appropriate level of transparency.

The statement published on 7 January 2009 is available on the CESR [website](#). (Source: [CESR, press release](#), 7 January 2009) - [Back](#)

New Legislation & Consultations

FSA Lifts Ban On Short Selling And Extends Disclosure Regime

Following a brief [consultation process](#) at the beginning of the year, the FSA has now confirmed that it will

extend its disclosure obligation for short selling of stocks in UK financial sector companies until 30 June 2009.

Disclosure of a net short position in the stock of a UK financial sector company will continue to be required once a position reaches 0.25% of a relevant firm's issued share capital. However, since 16 January 2009, further disclosure is only required if a short position changes by a further 0.1% of issued share capital (i.e. at 0.35%, 0.45% etc).

The FSA plans to issue a further consultation paper with proposals on longer-term options for a short selling regime within a few weeks.

Policy statement PS09/1: Temporary short selling measures - Feedback on CP09/1 can be found [here](#). Source: [FSA press release](#), FSA/PN/009/2009, 14 January 2009) - [Back](#)

Amendments To The FSA Handbook

During January 2009 the FSA Board made five instruments changing its Handbook. Handbook Notice 84 which was published on 26 January 2009 introduces these changes. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board. The following instruments were made:

On 14 January, it made an instrument which extends its disclosure obligation for short selling of stocks in UK financial sector companies until 30 June 2009. The decision follows strong support for the proposals on which the FSA consulted last week (FSA 2009/1).

On 15 January, the FSA Board made an instrument which enables a building society which merges with the subsidiary of another mutual society to keep its separate depositor protection compensation limit; the rule will operate on a temporary basis until September 2009 (FSA 2009/2).

On 22 January, at its normal monthly meeting, the FSA Board made three instruments which:

- make corrections to and clarify various Handbook provisions (FSA 2009/3);
- ensure PII indemnity limits are adjusted in line with the increase in the European Index of Consumer Prices from 15 January 2003 to 15 January 2008 (FSA2009/4); and



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- ensure that an appropriate level of investor protection is maintained in electronic authorisations of transfer of title (FSA 2009/5).

Please click [here](#) for a copy of Handbook Notice 84. (Source: *FSA Handbook Notice 84, January 2009*) - [Back↑](#)

The Stamp Duty And Stamp Duty Reserve Tax (Investment Exchanges And Clearing Houses) Regulations 2009

The Stamp Duty and Stamp Duty Reserve Tax (Investment Exchanges and Clearing Houses) Regulations 2009, published by HM Revenue and Customs on 19 January 2009, exempts from stamp duty and stamp duty reserve tax certain transfers of, or agreements to transfer traded securities made in the course of trading in those securities on the Euro Millennium Multilateral Trading Facility.

Please click [here](#) for a copy of the Regulations and click [here](#) for a copy of the accompanying explanatory memorandum. (Source: *HM Revenue and Customs, 19 January 2009*) - [Back↑](#)

Rome II Enters Into Force

On 11 January 2009 Regulation (**EC**) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) came into force.

In summary this Regulation defines the conflict-of-law rules applicable to non-contractual obligations in civil and commercial matters, including product liability, negotiorum gestio (acts relating to the affairs of another person) and culpa in contrahendo (non-contractual obligations arising out of dealings before the conclusion of a contract). Applicable from 11 January 2009 in all Member States except Denmark, it does not attempt to harmonise the substantive law of the signatories in the field of non-contractual obligations, but only their conflict-of-law rules, so that, no matter where in the EU an action is brought, the rules determining the applicable law will always be the same. As a general rule, and in order of priority, the law applicable is:

- the law of the country where the damage occurs;
- the law of the country where both parties were habitually resident when the damage occurred;

- the law of the country with which the case is manifestly more closely connected than the other countries. It authorises the parties to choose, by mutual agreement, the law that will be applicable to their obligation.

Rome II applies to events giving rise to damage that occur after it came into force (20 August 2007).

Please click [here](#) for a copy of the Regulation. (Source: *European Union, [website](#), 11 January 2008*) - [Back↑](#)

FSA Quarterly Consultation Proposes Changes To GABRIEL

The FSA's Quarterly Consultation Paper 09/2 (No. 19) was published on 6 January 2009. Comments on all the proposed amendments should be submitted by 6 March 2009.

The accompanying newsletter clarifies that the amendments and proposed changes are driven by enquiries and requests for clarification following the implementation of the new FSA reporting system (**GABRIEL**). This had identified some anomalies caused by other legal instruments, as well as some inconsistencies and duplications.

Hence the FSA proposes amendments to Chapter 16 of the Supervision manual (**SUP**) relating to the reporting requirements in SUP 16.12 – Integrated Regulatory Reporting.

Please click [here](#) for to access the online response form. Source: *FSA [Newsletter Consultation Paper 09/2, January 2008](#)* - [Back↑](#)

FSA Consultation Paper On Obtaining And Using Firm-Commissioned Reports'

On 26 January 2009 the FSA published a consultation paper 09/5 entitled 'Obtaining and using firm-commissioned reports'.

The FSA proposes a small amendment to the Enforcement Guide (**EG**) – to insert guidance for firms who decide to give it a copy of an internal investigation report in anticipation of the FSA potentially taking enforcement action.

The consultation paper will be of primary interest to regulated firms who may consider giving the FSA a copy of an internally commissioned report. It does not directly affect consumers.



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The consultation process will last for a limited period of 28 days and will close on 23 February 2009. The FSA plans to publish feedback on responses, along with a final amended text of EG, at the beginning of April 2009.

Please click [here](#) for a copy of the consultation paper. (Source: [FSA Newsletter](#) to CP 09/5, January 2009) - [Back↑](#)

European Commission Launches Consultation On review Of Prospectus Directive

The European Commission (**Commission**) has launched a consultation on its review of the application of the Prospectus Directive, including some proposals to improve and simplify this Directive.

The proposal is a key element of the Commission's action plan to reduce administrative burdens on EU companies. The closing date for replies is 10 March 2009.

Following an extensive and continuous dialogue with stakeholders, including the Committee of European Securities Regulators (**CESR**) and the European Securities Markets Expert Group (**ESME**), the Commission has concluded that some particular elements of the Prospectus Directive merit a review and has put forward proposals to improve and simplify the Directive.

Measures to address the problems identified include:

- definition of qualified investors
- revision of exempt offers ('retail cascade' issue and employee shares schemes)
- revision of annual disclosure obligation
- time limit for exercise of right of withdrawal
- certain thresholds of the Directive

The consultation is available at: http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm

(Source: *European Union*, [rapid press](#) release, 9 January 2009, IP/09/27) - [Back↑](#)

FSA Enforcement

FSA Fines Firm For Failings In Its Anti-bribery And Corruption Systems And Controls

On 8 January 2009 the FSA announced that it has fined Aon Limited (**Aon**) £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals.

According to the accompanying press release, Aon failed to properly assess the risks involved in its dealings with overseas firms and individuals who helped it win business and failed to implement effective controls to mitigate those risks. As a result of Aon's weak control environment, the firm made various suspicious payments, amounting to approximately US\$7 million, to a number of overseas firms and individuals.

Please click [here](#) for a copy of the Final Notice. (Source: *FSA* [press release](#), FSA/PN/004/2009, 8 January 2009) - [Back↑](#)

Pacific Continental Former Chief Executive And Former Finance Director Both Banned And Fined £80,000 And £95,000

The FSA announced that it has banned the former chief executive of stockbroking firm Pacific Continental Securities UK Limited, Mr Steven Griggs, and its former finance director, Mr Charles Weston, and also fined them £80,000 and £95,000 respectively for serious failures in the company which led to customers buying high risk shares without suitable advice.

The FSA found that between 1 April 2005 and 20 June 2007, Mr Griggs and Mr Weston had acted without integrity, and had failed to ensure that customers were treated fairly or that PCS was properly run.

The final notices for [Mr Griggs](#), [Mr Weston](#) and [Pacific Continental](#) can be found on the FSA website.

(Source: *FSA* [press release](#), FSA/PN/018/2009, 28 January 2009) - [Back↑](#)



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[Legacy Financial Planning Ltd Fined £28,000 For Failing To Adequately Explain Risk To Investors](#)

The FSA fined Legacy Financial Planning Limited £28,000 for failing to adequately advise investors about the risks associated with certain transactions.

According to an accompanying press release the firm also failed to make and retain records that demonstrate the suitability of its advice and ensure that its business is conducted in accordance with FSA requirements.

Between September 2006 and September 2007, the firm issued suitability letters to customers that did not explain why the recommended transaction was suitable and failed to adequately disclose the risks and any disadvantages of recommended transactions. Legacy also failed to make or retain records to demonstrate the suitability of its advice.

The Final Notice for [Legacy Financial Planning Limited](#) can be found on the FSA website.

(Source: FSA [press release](#), FSA/PN/016/2008, 26 January 2009) - [Back↑](#)

[Insider Dealing: Financial Services Authority Prosecutes Mr Neil Rollins](#)

On 7 January 2009 the FSA announced in a press release that Mr Neil Rollins of Keighley, West Yorkshire, was charged at City of Westminster Magistrates' Court with 4 counts of insider dealing.

According to the press release, Mr Rollins has been charged with the following offences:

- 1) Having inside information which related to PM Group plc, disposed of 20,000 shares on 22 August 2006, 10,000 shares on 23 August 2006, 30,000 shares on 6 September 2006 and 13,989 shares on 13 September 2006 in PM Group plc.
- 2) Having inside information which related to PM Group plc, on or before 4 September 2006, encouraged Louisa Rollins to deal in shares in PM Group plc.
- 3) Transferring criminal property, in two separate amounts of £25,000 on 24 November 2006, £50,000 on 27 November 2006 and £20,000 on 28 November 2006, to an account in the name of David Rollins knowing or suspecting it to represent the proceeds of insider dealing.

(Source: FSA [press release](#), FSA/PN/002/2009, 07 January 2009) - [Back↑](#)

[Belgian Private Investor Fined £176,254 For Market Abuse](#)

On 14 January 2009 the FSA fined Mr Erik Boyen, a Belgium based private investor, £176,254 for dealing in the shares of Monterrico Metals Plc, an AIM-quoted company, on the basis of inside information. The financial penalty includes a disgorgement of profit of £127,254 and an additional penalty of £49,000.

The [Final Notice](#) for Mr Erik Boyen includes the background to the case, the regulatory requirements contravened and the factors taken into account when settling the level of his fine. A [press release](#) and final notices for his brother, [Mr Filip Boyen](#), and [Mr Richard Ralph](#) can be found on the FSA website. (Source: FSA [press release](#), FSA/PN/008/2009, 14 January 2009) - [Back↑](#)

[Entertainment Rights Plc Fined £245,000 For 78 Days Delay In Disclosing Inside Information](#)

On 23 January 2009 FSA announced that it has fined Entertainment Rights plc (**Entertainment Rights**) £245,000 for failing to disclose inside information to the market in a timely manner.

According to the accompanying press release on 29 December 2006, Entertainment Rights and its subsidiary, Gold Key Home, entered into an agreement to distribute DVDs in the United States. A variation to the agreement came into effect on 10 July 2008 reducing the company's estimated profits for 2008 by US\$13.9 million. Entertainment Rights considered that there would be future opportunities to reduce the impact of the variation and as such delayed making an announcement. The variation was inside information and should have been disclosed to the market as soon as possible.

The Final Notice for [Entertainment Rights plc](#) includes the background to the case, details of the principle and rule breaches, and factors taken into account when setting the level of the fine.

(Source: FSA [press release](#), FSA/PN/015/2009, 23 January 2009) - [Back↑](#)



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Wolfson Fined £140,000 For Delaying Disclosure Of Inside Information

On 20 January 2009 the FSA announced that it has fined Wolfson Microelectronics plc (**Wolfson**) £140,000 for failing to reveal price sensitive information to the market as soon as possible. The delay led to a false market in Wolfson shares for 16 days.

In an accompanying press release the FSA explains that on 10 March 2008, a major customer informed Wolfson that it would not be required to supply parts for future editions of two of its products (the "negative news"). Wolfson estimated that this represented a loss of \$20 million or 8% of its forecast revenue for 2008. Wolfson also expected, based on other more positive information, that its 2008 forecast revenue would remain the same. The negative news was such that it constituted inside information and should have been disclosed as soon as possible.

On 12 March, Wolfson discussed the matter with its investor relations advisors who wrongly recommended that there was no need to disclose the negative news. Consequently, Wolfson delayed making an announcement. Wolfson had not contacted its corporate brokers or legal advisors at this point.

At its board meeting on 20 March, Wolfson reconsidered the earlier advice received. Following the meeting, Wolfson sought legal and corporate broking advice which recommended disclosing the negative news. On 27 March, the company announced the negative news and its share price closed at about 18% lower than the previous day."

The Final Notice for [Wolfson Microelectronics plc](#) includes the background to the case, details of the principle and rule breaches and factors taken into account when setting the level of the fine.

(Source: FSA [press release](#), FSA/PN/011/2009, 20 January 2009) - [Back↑](#)

Funds

FSA Explains Taping Rules In Relation To Private Equity End Venture Capital Firms

The British Venture Capital Association (**BVCA**) published a letter it had received from the FSA in

relation to recording voice conversations and electronic communications (**taping rules**).

The FSA taping rules are set out in PS08/1 and are due to come into force on 6 March 2009. The letter provides assistance to private equity and venture capital firms when implementing the new rules.

The letter can be found on the BVCA [website](#). - [Back↑](#)

FAQ On UCITS Depositories

On 26 January 2009 the European Commission published Frequently Asked Questions on Responsibilities of UCITS depositories.

An accompanying press release explains that the UCITS regulatory framework has proved very resilient during the current crisis. Despite very difficult market conditions, asset illiquidity and investor redemptions, no more than a handful of funds have been forced to suspend trading or close. The regulatory safeguards embedded in the regulatory model have been instrumental in helping UCITS funds to weather this crisis.

However, the recent Madoff scandal has revealed differences in the way that the requirements of the Directive are given expression in national law. It has revealed different expectations as to whether the depository is required to keep assets under its control so as to be able to return them to investors, or whether its responsibilities are confined to monitoring the security of the assets. It also suggests differences as to where the burden of proof lies in establishing responsibility and liability.

Please click [here](#) for a copy of the FAQs. (Source: *EU rapid press release*, IP/09/126, 26 January 2008) - [Back↑](#)

UCITS: MEPs Back Management Company Passport Approach

On 13 January 2009 the European Union published a press release announcing that the European Parliament has approved a proposed reform of the UCITS directives, aimed at making the investment fund market in the EU less fragmented and at improving efficiency.

The press release clarifies that a key point relate relates to the "management company passport" allowing funds authorised in one Member States to be managed remotely by a management companies established in another Member State and authorised by



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that Member State's financial supervisory authorities. This widening of the passport approach was not included in the Commission's original proposal pending a further consultation by the Committee of European Securities Regulators, in the light of concerns about possible risks to the "gold standard" of investor protection which the UCITS brand represents.

The directive still needs to be approved by the Council, but the informal agreement already reached means this is now a formality. Member States will need to enact national legislation to apply the main changes by 1 July 2011.

Please click [here](#) for a copy of the text as adopted by the Parliament. (Source: *European Union*, [press release](#), 13 January 2008) - [Back↑](#)

GMG Publishes First Report On Conformity With Walker Guidelines

On 12 January 2009 the Guidelines Monitoring Group (**GMG**) established to review the private equity industry's conformity with the Walker Guidelines published its first report on disclosure and transparency in private equity.

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 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.

Overall, the GMG considers that only a small number of companies have not met the Guidelines' enhanced disclosure requirements to a satisfactory degree.

The full report can be found at www.walker-gmg.co.uk. (Source: *GMG Private Equity Monitoring Group on Transparency and Disclosure First report – January 2009*) - [Back↑](#)

If you wish to discuss any of the above, or for more information, please contact a member of the Financial Regulation Group



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