The Sharman Secretariat
c/o Financial Reporting Council
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23 December, 2011

Direct line:

Email:

Dear Sirs

I am writing on behalf of the British Private Equity and Venture Capital Association ('BVCA') in response to the Sharman Enquiry: Preliminary Report and Recommendations of the Panel of Enquiry.

The BVCA is the industry body for the UK private equity and venture capital industry. With a membership of over 450 firms, the BVCA represents the vast majority of all UK based private equity firms and their advisers. This submission has been prepared by the BVCA's Legal & Technical committee, which represents the interests of BVCA members in legal, accounting and technical matters relevant to the private equity and venture capital industry.

As major investors in private companies, and some public companies, our members have an interest in financial reporting matters, the conduct and information presented, by such companies and the burdens placed on the management of such companies.

General

We welcome the debate on going concern and liquidity risks and, in general, lessons for companies and auditors as a result of the recent crisis. However, we would note that the crisis mainly related to a breakdown of the global banking system which had an inevitable knock on effect to companies. Most major surprises related to banks because of a series of events that took place relatively quickly and that, although there was a severe impact on other companies because of the tightening of credit, the existing models used by companies and auditors did not break down. We consider that this is particularly the case with private companies where it is possible for there to be a more informal relationship with stakeholders beyond financial reporting so that the benefit of providing additional disclosure in annual financial reports can often be less than the burden of having to provide it.

We are therefore concerned that recommendations to engage with the IASB, the IAASB and other bodies who set universal standards for financial reporting and auditors would lead potentially to a situation where private companies are left with additional burden with no significant benefit.

However, the BVCA recognises that there are some larger more complex private companies where greater disclosure and transparency is of benefit to their stakeholders. In November 2007 the Guidelines for Disclosure and Transparency in Private Equity were published by Sir David Walker ('the Guidelines'). This lead to the setting up of the Guidelines Monitoring Group ('the GMG') which is independent of the BVCA and is tasked, amongst other things, with reviewing and

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updating the 'Guidelines'. We consider therefore that the output from the Sharman Enquiry should be dealt with under the present regulatory structure for these companies and that the GMG should take the conclusions into account as part of their review responsibilities. We believe that this approach is preferable to mandating additional requirements for all private companies.

In general we consider that the existing regulatory regimes and environments should be used to encourage greater disclosure and transparency rather than making changes to Company Law, and that such changes should be made to reflect how businesses are managed rather than to encourage particular business behaviour.

Recommendation 1

We support the concept of the FRC working with other regulators and government bodies to learn lessons from company failures, but we would not support this being done as an additional investigation of the persons involved. We consider that the investigation role should be carried out by BIS and that any further direct investigation would place the persons involved under unreasonable pressure. However, we support co-operation between BIS and the FRC in order to learn lessons and make changes for the future.

Recommendation 2

We consider any additional disclosure requirements should be furthered solely by engaging with the UKLA. We can see some argument for more information on the Directors' Going Concern assessment but for listed companies and larger private companies only. We consider that those of the latter under private equity ownership should be dealt with under the current regulatory environment. In addition we would strongly oppose any such amendments being made to Accounting Standards for SMEs.

Recommendation 3

A review of the FRC's Guidance for Directors would seem also to be a sensible approach as long as it was clear that it related to listed companies only. In this context we consider that liquidity stress testing beyond a twelve month period is of limited value because of the short term nature of many funding instruments. We consider that larger private companies under private equity ownership should be dealt with under the current regulatory environment.

Recommendation 4

As above for Recommendation 3, we consider that any discussion by listed, or other companies on longer term strategy and risks should address solvency rather than liquidity and that the audit committee of a company, should there be one, has a role in monitoring the effectiveness of the process undertaken to evaluate Going Concern.

Recommendation 5

We consider that the reporting by auditors tends to relate to all companies that are audited so that to depart from the existing requirements would require a two tier model to separate listed companies from private companies which might be difficult to achieve.

We are also concerned about the requirements that auditors might place on private companies before they are prepared to report. For instance we would not support a replication of the approach adopted by public companies so that the going concern statement made by a public company in its financial statements is required to be made privately to the auditor so that the private company ends up with the same process as the public company.

The 'one audit fits all' approach already causes problems for private equity portfolio companies because the auditor often requires a support comfort letter from the private equity house which is impossible to give because of the fiduciary duty that the fund has to it investors over all its investments.

In the context of the above we respond to your questions as follows:

Question 1

Do you agree with the Panel's overall conclusion that the going concern process and disclosures should be designed to encourage business behaviours?

Yes, but it is important to consider process and disclosures that are outside the formal financial reporting framework as well as inside, such as the Guidelines.

Question 2

Do you support each of the five recommendations set out in Chapter 1?

See above. The stratification of requirements between public and private needs to be considered carefully as guidance and standards are not always set up that way. Also they are often not specific to the UK. Therefore we think that the best approach is to concentrate on UKLA requirements and FRC guidance to listed company directors.

Question 3

Should the scope of any final recommendations be applicable only to listed companies?

Yes. Although we can see some benefit for additional disclosure from some more complex large private companies, we believe that this can be handled by the current regulatory environment for these companies

Question 4

Banks ?

We have no comment.

Question 5

Do you have any other comments?

No.

However, further information on the Guidelines and GMG can be found at Walker-gmg.co.uk

Yours faithfully,