



By email: [stewardshipcode@frc.org.uk](mailto:stewardshipcode@frc.org.uk)

Ms Susannah Haan  
Financial Reporting Council  
Fifth Floor  
Aldwych House  
71-91 Aldwych  
London  
WC2R 4HN

Dear Ms Haan

**GC100 response - Consultation on a Stewardship Code (“the Code”) for Institutional Investors**

The GC100 is the association for general counsel and company secretaries of companies in the FTSE100. There are currently more than 120 members of the group, representing some 90 companies.

The GC100 has responded to previous consultations by the FRC, including in March 2008 (on the revisions to the Combined Code) and in June 2009 (on the review of the effectiveness of the 2008 Combined Code), and we welcome this opportunity to respond once again on corporate governance issues, in furtherance of our previously expressed views. For ease of reference, we have appended to this letter extracts from our comments in June 2009.

In relation to the Code, which is “aimed at institutional investors and their agents”<sup>1</sup>, we have responded from the perspective of the GC100 members who are, in general, the investee “listed companies” with whose stewardship the institutional investors are charged. However, some GC100 members will be involved in several capacities in relation to the Code: a few groups will have investment management businesses, which will be the agent institutional investors to whom the Code appears to be primarily targeted, and, for a significant number of members, they will be the principal employer for pension trust schemes who are the client institutional investors<sup>2</sup>. We have left these separate roles, and the concerns relating to them, to be raised appropriately by the individual GC100 members and other bodies, such as those that make up the ISC.

We have responded to the specific questions raised in the consultation and we have also provided additional comments where we feel value can be added from the perspective of plc companies i.e. where institution and companies interact.

Throughout this letter, we use the terms “shareholders”, “institutional investors” and “institutions” interchangeably to refer to some or all of the stakeholders referred to in

---

<sup>1</sup> Paragraph 1.18 of the consultation

<sup>2</sup> Paragraph 3.2 of the consultation.

paragraph 3.2 of the consultation, and the expression “plc” or “company “ to refer to the investee companies whose views this letter seeks to represent.

### **Policy objectives**

We believe the Code is an appropriate format for more effective engagement between companies and institutions, and that it could lead to a much more joined up approach to governance. However, not all institutions choose to engage with companies and therefore it is imperative that the policy objectives should encourage the “apply or explain” model<sup>3</sup> so as to avoid boiler plate disclosures that become generic for all institutions.

From a plc perspective, key institutions do already actively engage with boards, but the hope is that the Code should encourage a “joined up” approach to governance issues and voting. Where this regularly breaks down is voting at the AGM - see our comments below.

Our specific comments on the principles relevant to the plc experience are set out below.

### **Section 3 – The Coverage of the Code**

We agree that voting service agencies should commit to the spirit of the Code. It may be useful to have some clarity about institutions’ commitment to avoiding ‘lost votes’, and to demonstrating that their votes have been cast (although we acknowledge that there may be practical issues here, due to the “investment chain”<sup>4</sup>, which may better be addressed by the investment management community). Increased transparency on the interaction between the front office investment management decision-making, corporate governance/stewardship team and back office voting implementation processes within the active investment management arena may result in more votes being lodged at the AGM.

We think it is imperative that the proxy voting advisory bodies commit to the spirit of the Code (ABI, PIRC, NAPF, RREV, RiskMetrics and Manifest). As the process by which the proxy voting advisory bodies engage with companies in relation to the AGM is not always effective, companies would welcome a more open debate about the advice which they give on voting to shareholders.

We feel it will be important for foreign investors to commit to the Code, as the majority of UK companies have significant amounts of their capital in overseas funds and institutional accounts. However, we recognise that in practice this may be difficult to impose. We look forward to the response from the foreign institutional investor community.

### **Section 4 – Content of the Code**

We believe the ISC Code is a good model to use and have the following comments on the Principles.

---

<sup>3</sup> Please refer to the Appendix to this letter, for suggestions we have made previously about “apply or explain” as an alternative to “comply or explain”, to help avoid box-ticking.

<sup>4</sup> Paragraph 3.1 of the consultation.

**Principle 1** - We feel that institutional investors' policies on how they will discharge their stewardship responsibilities should be disclosed on their websites, but that this principle should also be extended to include proxy voting service companies as well as advisory services.

**Principle 3** - There may be some benefit in implementing a level of materiality or introducing a threshold for the number of voting rights an institution must hold in a company in order for the Code to apply. This may help in not reducing the Code to merely a box ticking exercise.

**Principles 4 & 5** - Institutions that hold significant voting rights in companies already actively engage with management. To codify the areas where they would take action, and what form that action might take, may be useful. However, the Code should be flexible, allowing shareholders to deal with management on their key issues in the way that they feel is most appropriate, with broad disclosure of the nature of the engagement activities, rather than prescription of what they should be. For example, companies would wish to avoid investors making public statements about their intentions prior to AGMs where possible, and both parties are likely to engage more effectively on the basis of confidential dialogue.

**Principle 6** - We advocate appropriate disclosure of voting activity and that institutions should disclose if they use any proxy voting or voting advisory services. Some advisory services do follow up on their voting record following the AGM. We think it would be useful for this principle to be extended to include more guidance on what their voting policy is. Institutions should be required to disclose the voting procedure and process: for example, who has the final responsibility to authorise the vote, how are proxy voting service companies or proxy voting advisory companies used, and full disclosure of the communication policy with the investee company if lodging an 'abstain' or 'against' vote. This may assist in counteracting some of the issues raised in the Myners Report and assist in identifying so-called 'lost votes'.

Additionally it would be helpful to have disclosure of which corporate governance guidelines they follow (e.g. ABI or others) and if they have their own guidelines on some topics.

Corporate governance departments of fund management houses should have, via Investor Relations teams, good access to the executive directors of companies. However, it is not always clear that the corporate governance departments then communicate internally and effectively with the fund managers in order to inform, as appropriate, the investment (or the dis-investment) decision-making process, and, conversely, whether the fund managers consider that they have a role in the voting/corporate governance process. It would be helpful to have some additional guidance on this.

Regarding the comparison of Section E of the Combined Code, we agree that it is impracticable that institutions should attend more than a few AGMs at most, but what is important is that they vote and that their votes are counted.

## **Section 5 – Reporting and Monitoring**

There should be greater consistency between the availability of disclosable information to institutions, their clients and the public, and this could be made available not only through institutions' websites, but centrally (whether via links or otherwise) via the FRC. The Code's list of disclosable information seems sufficient

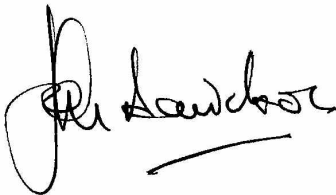
with the additional disclosures that we have outlined in this letter. It would be helpful if the voting agencies and advisory services explain how they adhere to the Code through a website statement of their engagement principles.

We believe that the structure of the ISC Code based on the format of the UK Corporate Governance Code “apply or explain” basis is appropriate<sup>5</sup>, and is a reporting model with which both institutions and companies are familiar. It is worth reiterating that it is important to have effective implementation and oversight of the Code so it does not result in boiler plate disclosures by institutions.

If you have any questions arising out of our response, or if we can usefully elaborate on any aspects, please contact me or Geoffrey Timms, Group General Counsel and Company Secretary, Legal and General Group plc, who led the GC 100 working party on this consultation.

*As a matter of formality, please note that the views expressed in this letter do not necessarily reflect the views of all of the individual members of the GC100 or their respective employing companies.*

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Davidson', with a horizontal line underneath the name.

**John Davidson**  
**General Counsel and Group Secretary**  
**SABMiller plc**

**Chairman of the GC100**

---

<sup>5</sup> Please refer to the Appendix to this letter, for suggestions we have made previously about “apply or explain” as an alternative to “comply or explain”, to help avoid box-ticking.

## **Appendix**

### Extracts from GC100 letter of 16 June 2009 to Mr Chris Hodge (on the review of the effectiveness of the 2008 Combined Code)

#### Dialogue with Shareholders

This lies at the heart of the system of governance described by the code. This dialogue can only take place effectively if there is a clear understanding by both the owners and the company on the scope of disclosure and reporting.

Companies need to understand and accept the legitimate expectations of the shareholders as owners. Shareholders must have the resource and time for disclosures and reports to be properly considered and evaluated. It is important that non-compliance statements given by companies should provide investors with the necessary information that they require to evaluate the companies' corporate governance arrangements. Investors and governance bodies alike should take a positive approach when reviewing governance reports and areas of non-compliance with the Code. We firmly believe that the Code's explanation regime will work well as long as the above points are reinforced and followed. This will only work if companies and their investors enter into a dialogue at the appropriate time.

The GC100 believes that a different emphasis in language will assist companies, investors and governance bodies including voting advisory services to maintain a healthy dialogue regarding the explanations given. We therefore recommend that 'comply or explain' be changed to 'apply or explain'.

In this respect, we believe enhanced dialogue between companies and investors would be welcome, not just around reporting times, but more generally in order for companies to explain in more detail areas of possible, or potential, non-compliance and the reasons why. Investors could equally put forward their views regarding possible alternatives/solutions which would avoid concerns around box-ticking and the generally perceived negative reaction to non-compliance whatever the reason. Any lack of understanding can sometimes lead to a stand-off between company and investor which ought to be capable of resolution through better and more informal dialogue.

#### Shareholders

Section 2 of the Code will only be effective if institutional shareholders actually enter into a dialogue with companies based on a mutual understanding of objectives and then make considered use of their votes. At the moment, there is some evidence to show that this does not always happen. If shareholders review their companies' corporate governance arrangements including any departures from the Code in a pragmatic and informed manner, this area of the Code will be effective and useful to both parties. We therefore feel that this important aspect of the Code should be monitored.

We also feel that the findings of the Walker Review on corporate governance standards within the UK banking industry should be monitored to ensure that any areas for improvement within the Code are captured. We are of the opinion that the Code should stay general and not become industry specific. A consistent approach for all listed companies with the opportunity to explain any departures from the Code is, in our opinion, the best way forward.

#### On “comply or explain”

On the whole, we feel that the ‘comply or explain’ mechanism is satisfactory although this could be improved upon. The current approach implies that any explanation given by a company will be seen as non-compliance of the Code. This may lead to an incorrect assumption that the governance arrangements within the company are in some way flawed and subsequently increases the risk of a box ticking approach amongst some of the governance bodies and voting advisory services.

As mentioned earlier in this letter, the GC100 believes that a different emphasis in language will assist companies, investors and governance bodies including voting advisory services to maintain a healthy dialogue regarding the explanations given. We therefore recommend that ‘comply or explain’ be changed to ‘apply or explain’.

#### General

We trust that the above response on behalf of our members will contribute towards the development of the Code and the overall enhancement of good corporate governance. We do not agree that the Code should be tailored to deal with the corporate governance issues associated with particular industries e.g. the banking sector. The Code should provide a consistent framework that is fit for purpose for quoted companies regardless of their industry. Finally, we would urge the FRC to cooperate with the other reviews which are ongoing in order to ensure a coordinated approach to any changes in corporate governance.

-oOo-