SABMiller plc

Financial Reporting Council's Review of the Effectiveness of the Combined Code

SABMiller plc Response

29 May 2009

SABMiller plc welcomes this opportunity to respond to the FRC's review of the effectiveness of the Combined Code.

In summary, we remain comfortable with the Code and think that it works well. In particular, we fully support its principles-based approach. Except for the removal of the nine-year rule, and a clear change in emphasis from "*comply* or explain" to "*apply* or explain", we would not want to see the Code changed significantly as a knee-jerk reaction to the change in economic conditions under which companies are operating. In particular, we do not agree that the Code should be tailored to deal with the corporate governance issues associated with particular industries, such as the banking sector, or that particular requirements driven, for example, by the banking regulator for companies which are regulated, should "spill over" into the wider corporate world.

The Code should provide a consistent framework that is fit for all quoted companies regardless of their industry, and we think that it should be allowed to continue settle in its current form. The Code will only provide a framework for good governance but will not alleviate the issues caused by bad management.

Our considered responses to your specific individual questions are set out below:

1. Which parts of the Code have worked well? Do any of them need further reinforcement?

It is our view that the Code generally reflects good and responsible governance practice. Its drafters intended that it should do just that and were successful. We suspect therefore that most responsible UK companies would choose to govern themselves in accordance with the key principles in the Code, even if it did not exist. It is therefore difficult to determine whether among soundly governed companies the Code actually plays a positive role in supporting better Board performance, or simply reinforces best practice, but even if it is the latter, then that must be a good thing.

Many of the suggestions which have been made in the media and by some commentators over recent months about "improvements" to the Code appear, on further inspection, already to be contained in the Code. What has been lacking is not the Code itself, but its application.

The point is well made in the GC100's response to the Walker Review that the more fundamental and underlying point is that there seems to be an unrealistic expectation that more "governance" will guarantee success or, perhaps more pertinently, guarantee no failure. The events of the last 12 months do present an important opportunity to review how robust corporate governance processes are and to learn what might have been done differently. However, businesses have to manage risk and judgments about risk must be taken by executives as part of the management by them of the company's business. If there were governance weaknesses that contributed to the current crisis, it was in the application of the Code rather than a lack of prescription within the Code itself. Adding extra governance requirements is likely to lead to more box ticking and hamper effective scrutiny by non executive directors by occupying time with form rather than looking at substance. Key to the effectiveness of corporate governance is the calibre of the individuals involved, and that they have a clear understanding of their role and responsibilities and the tools necessary to discharge their responsibilities effectively.

2. Have any parts of the Code inadvertently reduced the effectiveness of the board?

In three respects the Code may inadvertently have reduced the effectiveness of the board.

First, as explained further below, we do not believe that the "comply or explain" approach is working as it should do. This can impact negatively on Board performance as instances of non-compliance, even where adequately explained, could bring unwelcome pressure to bear on companies to make changes that are not necessarily in the interests of the company or its shareholders; and secondly, we do not support the nine-year rule.

Secondly, regarding the nine-year rule: we believe that this is an artificial and arbitrary rule that does not place sufficient value on experience gained by a director while on the Board. When the effect of the rule is considered in the context of the way in which the "comply or explain" regime currently works, the rule can lead to a negative view being taken by the governance industry of a director and/or the company, effectively forcing action to be taken for the director to vacate his/her seat on the Board at the time when, precisely because of the length of his/her tenure, the director in question is at his/her most valuable to the company. If the rule is retained, we believe that a much more pragmatic approach to this provision should be taken by companies and investors alike, rather than a box-ticking rejection and failure to engage with a company's explanation and the judgement of the board.

Thirdly, the rules which restrict the ability of non-independent directors from sitting on certain committees, especially the audit committee, are overly restrictive, and without logic. Why it is thought that an individual who represents a major shareholder, but who is clearly independent of management should be less able effectively to discharge the duties of a member of the audit committee than a director who has no other connection with the company at all, is quite unclear. The focus of independence should be independence of management, and not relationship to a shareholder.

3. Are there any aspects of good governance practice not currently addressed by the Code or its related guidance that should be?

We do not believe that this is the time for any major rewrite of the Code, or any expansion of the practices which the Code should seek to prescribe or guide.

Some commentators have suggested that a further provision relating to the approval and disclosure of directors' conflicts of interest should be incorporated into the Code. We do not support this in principle. The conflict of interests regime is a statutory regime, enshrined in the Companies Act 2006, and like the rest of company legislation is something which all companies, listed or not, have to comply with in one respect or another. We do not believe that this is an appropriate area for the Code.

It has also been suggested that the Code should provide a clear definition of what constitutes 'recent and relevant financial experience' for the purposes of Code provision C.3.1, on the grounds that clarity on this is lacking in the existing Code. We would not support such a change on the basis that we believe it is preferable for boards to apply their own judgement and form their own view, rather than have another yet another judgement forced on upon them by the governance industry – largely because, again, all companies are different and there is no one size fits all prescription. If the FRC were minded to develop this provision, we would prefer to see further illustrative guidance, rather than prescription, and a clear recognition that boards must form their own judgement according to their own circumstances.

4. Is the 'comply or explain' mechanism operating effectively and, if not, how might its operation be improved? Views are invited on the usefulness of company disclosures and the quantity and quality of engagement by investors.

If it is intended that non-compliance accompanied by an adequate explanation should be viewed neutrally, or not negatively, then we do not believe that the "comply or explain" regime is working adequately.

The issue is that an instance of non-compliance, even where accompanied by an adequate explanation, seems to be characterised by the governance industry as a bad thing, and a cross against the company's governance scorecard. It is our experience that inadequate weight (or often no weight) is attached to the company's explanation and to the judgement of the board in exercising its fiduciary duties in a responsible and considered manner.

It does however seem to us to be inappropriate to lay all the blame for this problem at the door of the governance industry. If complying or explaining are presented as alternatives, as they are, then taking the option that is not the "comply" option will always be viewed as non-compliance. Referring to the regime as "comply or explain" therefore invites the governance industry and observers to view even the best and most compelling explanation as something that is less than compliance and to treat it as an instance of non-compliance.

This can lead a company to conclude that it is not worth its while to "explain", as the explanation will make no difference, and, more importantly, could force a company to take action to become "compliant" that could very well be contrary to the interests of the company and its shareholders.

We should add that in our case this problem has led to a degree of frustration but has had no material effect, possibly in part because our UK shareholder base is relatively small and the influence of the governance industry over voting on our resolutions at our annual general meetings has been limited.

We therefore strongly urge the FRC to change both the emphasis and the wording of the Code to "***apply*** or explain", and to stress that adequate and reasoned explanation is compliance. We believe that a change in the wording of the Code and a change in emphasis will assist companies, investors and governance bodies including voting advisory services to engage in and maintain a healthy dialogue about the explanations given.

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About SABMiller plc

SABMiller is one of the world's largest brewers with brewing interests and distribution agreements in more than 70 countries across six continents. The group's wide portfolio of brands includes premium international beers such as Grolsch, Miller Genuine Draft, Peroni Nastro Azzurro and Pilsner Urquell, as well as market-leading local brands such as Aguila, Castle, Miller Lite, Snow and Tyskie. SABMiller is also one of the largest bottlers of Coca-Cola products in the world.

In the year ended 31 March 2009, the group reported US$3,405 million in adjusted pre-tax profit and group revenue of US$25,302 million.

SABMiller is listed on the London and Johannesburg stock exchanges.