



By email: codereview@frc.org.uk

Chris Hodge
Corporate Governance Unit
Financial Reporting Council
Fifth Floor
Aldwych House
71 – 91 Aldwych
London WC2B 4HN

22 July 2011

Dear Mr Hodge

GC100 response to the FRC Consultation Document: Gender Diversity on Boards

I write on behalf of the GC100 in response to the above FRC Consultation Document. As you may be aware, the GC100 is the group for the general counsel and company secretaries of companies in the FTSE100. There are currently 90 members of the group, representing some 120 issuers.

Our response on the matters on which the FRC is seeking views in this consultation process is set out below.

1. The FRC seeks views on whether further changes to the Code are needed in order to help achieve more diverse and more effective boards. If so, what these changes should be. The consultation document includes some draft revisions to the Code on which comments are sought.

We note the statements in the Davies Review regarding the strong business case for balanced boards and that inclusive and diverse boards are more likely to be effective boards, better able to understand their customers and stakeholders and to benefit from fresh perspectives, new ideas, vigorous challenge and broad experience. We welcome the Review's emphasis on diversity and inclusiveness and we would like to see that spirit carried into the UK Corporate Governance Code in the changes to be made by the FRC as a result of this consultation. With this in mind, we consider that a number of changes should be made to the UK Corporate Governance Code to give effect to Lord Davies' recommendations. The changes we consider necessary to the Code are shown below, highlighted in bold italics:

Main Principle B.1

The board and its committees should have the appropriate balance of skills, experience, independence,

diversity and knowledge of the company to enable them to discharge their respective duties and responsibilities effectively.

B.2 Supporting Principle

The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management so as to maintain an appropriate balance of skills, experience and **diversity, including gender**, within the company and on the board and to ensure progressive refreshing of the board.

B.2.2 The nomination committee should evaluate the balance of skills, experience, independence, **diversity** and knowledge on the board and, in the light of this evaluation, prepare a description of the role and capabilities required for a particular appointment.

B.2.4

The board should make available (reference footnote 7 below) a description of the work of the nomination committee, including the process it has used in relation to board appointments and its progress towards achieving the objectives set out in the board's policy on diversity, including gender.

[Footnote 7 to B.2.1 The requirement to make the information available would be met by including the information on a website that is maintained by or on behalf of the company.]

We note the FRC's proposal that, if a change were to be made to the UK Corporate Governance Code ('the Code') to give effect to Lord Davies' recommendation, the change should be made in Provision B.2.4 by inserting after the sentence:

“A separate section of the annual report should describe the work of the nomination committee, including the process it has used in relation to board appointments.”

the sentence:

“This section should include a description of the board's policy on gender diversity in the boardroom, including any measurable objectives that it has set for implementing the policy, and progress on achieving the objectives.”

In our view, the proposed change is desirable but the reference to the board's policy should be a reference to the board's policy “on diversity” rather than to the board's policy “on gender diversity” in order to keep as close as possible to the recommendation Lord Davies made. We also believe that, in order to encourage boards to consider their policy on diversity throughout the company (and not just in the boardroom), the Code should refer to the “board's policy on diversity” rather than limiting the reference to the board's policy on “diversity in the boardroom”.

Further, in view of proposals being made elsewhere that annual reports should be “de-cluttered” we question whether the Code needs to stipulate that the information required by Provision B.2.4 has to be in the annual report. Such information could be as effectively disclosed if it were set out in the company's website.

We believe that the proposed changes will have the effect of encouraging boards to focus on their approach to diversity and the transparency that these changes would generate would be useful for investors and other stakeholders in the company.

2. The FRC asks whether it would be helpful to set out some of the key elements to be covered by a gender diversity policy – such as the criteria used when recruiting directors, or the steps taken to develop senior executive talent – and, if so, if this should be done in the Code or elsewhere.

In our view, whilst we believe it would be helpful to have informal guidance on the elements to be covered in a diversity policy, we think there are likely to be other organisations better placed than the FRC to provide such guidance, including advisory firms and associations operating in the field of diversity/inclusion.

We also consider that any guidance on gender diversity policies would need to cover the fine line

between meeting the requirements of the Code and remaining compliant with sex discrimination legislation.

3. *The FRC also asks for views on whether a new supporting principle on board evaluation is desirable and, if so, on the proposed wording which is:*

“Evaluation of the board should consider the balance of skills, experience, independence and knowledge of the company on the board, the board’s policy on gender diversity, how the board works together as a unit, and other factors relevant to its effectiveness.”

In our view a new supporting principle on board evaluation is neither necessary nor desirable. We consider boards should be given freedom to ascertain the most appropriate form of evaluation, within the broad parameters currently set out in the Code; in our view, to seek to introduce detailed supporting provisions would risk reducing, rather than enhancing, the effectiveness of a board evaluation.

3. *The FRC asks for views on when, if changes are made to the Code, these should come into effect. There are three options:*

- *the revised Code would apply to accounting periods beginning on or after 29 June 2011. If the new provisions took effect from the date of the revised Code they would have to apply retrospectively although companies would not report against them until 2012;*
- *the revised Code would take effect as the same time as any government regulations are made to implement Lord Davies’ recommendations, at the earliest on 1 October 2011 or 1 April 2012;*
- *the revised Code would apply for accounting periods on or after 29 June 2012 and so companies would not be required to report against the revised Code until 2013.*

In our view the third option is to be preferred as we are uncomfortable about a precedent that might be set if the changes to the Code had retrospective effect. Even if a relatively late effective date is adopted, we believe it is likely that many companies will choose to operate as if the new Code provisions had come into effect at an earlier date.

Please note that the views expressed in this response do not necessarily reflect the views of each and every member of the GC100 or their employing companies.

If you have any questions, please contact me or John Davidson (general counsel at SABMiller plc and current Chairman of the GC100).

Yours sincerely,



Mary Mullally
Secretary, GC100

