Allianz Global Investors GmbH

Allianz Global Investors GmbH, Bockenheimer Landstrasse 42-44, 60323 Frankfurt/Main

Jan Bremer
Leiter der Geschäftsstelle
Regierungskommission
Deutscher Corporate Governance Kodex
c/o Deutsches Aktieninstitut e.V.
Senckenberganlage 28
60325 Frankfurt am Main

By post and email: regierungskommission@dcgk.de

Date: December 21, 2016
Name: Henrike Kulmann
Phone: +49 69 2443 1 3616
E-mail: henrike.kulmann@allianzgi.com

Public Consultation on the Proposed Amendments to the German Corporate Governance Code

Response by Allianz Global Investors

Allianz Global Investors (AllianzGI) welcomes the opportunity to respond to the public consultation to the German Corporate Governance Code (GCGC). The views expressed in this document represent our position as an investment manager and do not reflect the formal position of Allianz SE as a listed issuer.

Allianz Global Investors is a diversified active investment manager, managing EUR 481 billion[1] in assets for individuals, families and institutions around the world. We invest for the long term across a range of different investment strategies, and pay close attention to growth prospects, return on capital, good governance, market positioning and quality of franchises. Furthermore, we believe that material environmental and social considerations are crucial to the success of a company looking for long-term outperformance.

Consistent with our investment philosophy, we routinely engage in dialogue with investee companies. Our investment views are influenced by the outcomes of these engagements and are linked organically to the proxy voting process, forming a consistent stewardship approach.

[1] As of September 30, 2016.

We welcome many of the proposed amendments to the GCGC and support the rationale behind them. However, we believe there is a scope for further improvements of corporate governance practices in Germany that would be beneficial for companies, investors and other stakeholders and would contribute to long-term sustainable value creation by German companies. Given the pivotal role of the GCGC in establishing and encouraging robust governance structures and practices by German issuers, we would encourage further enhancement of the Code as set out below.

Protection of minority shareholders

Minority shareholders in German companies have limited rights to decide on transactions of fundamental importance for the business and of profound implications for their investments. For example, **para 3.7** of the Code suggests that, in the event of a takeover offer, the Management and Supervisory Boards of the target company ask for shareholder approval of the transaction via an extraordinary general meeting. AllianzGI considers that a similar suggestion should be made in respect of the acquiring company in the event of a material acquisition. Furthermore, consideration should be given to protecting minority shareholder rights in the event of material related-party transactions outside of the company's ordinary course of business.

Supervisory Board composition and effectiveness

AllianzGI is of the view that the Code should set out clear **independence criteria** for Supervisory Board members under **para 5.4.2.** Precise, specific independence criteria and clear guidance on their application in the Code would provide a useful reference point for both issuers and investors. We would welcome specific references in the Code to such factors that can affect directors' independence as: board tenure, previous executive positions at the company, cross-directorships or significant links with other directors, affiliation with special interest groups (e.g. trade unions, government, affiliated companies, etc.), and entitlement to performance-related pay or other forms of remuneration beyond fixed fees for board and committee service.

We would also encourage the Commission to provide a clear guidance on what constitutes an appropriate **balance of independence** on the Supervisory Board (**para 5.4.1**). For example, we would normally expect at least 1/3rd of the entire Supervisory Board (including employee representatives) to comprise independent directors. Similarly, it is important to provide guidance with regard to the **independence of the key board committees**. Thus, we expect that, on the capital-side, the Audit Committee is composed only of independent directors with appropriate qualifications, experience, skills and capacity to effectively contribute to the committee's work.

AllianzGI shares the Commission's view that a Supervisory Board should specify its target composition (**para 5.4.1**) and that transparency should be provided to investors as regards directors' core expertise, experience, skills, qualifications, diversity characteristics, and external commitments to assist investors in evaluating board effectiveness and its ability to supervise and constructively challenge the management.

It would be beneficial for investors if **para 5.4.5** could be strengthened to provide guidance on the maximum number of board mandates that a Supervisory Board member and a Supervisory Board Chairman can hold to ensure they can fulfil their responsibilities to the high standard expected by investors. We are concerned that many Supervisory and Management Board members of German issuers have external commitments that appear to be excessive considering the increasing workload, responsibilities (and potentially liabilities) associated with non-executive roles. It is important for investors that Supervisory Board members have enough time to fulfil their duties under both normal and extraordinary circumstances when significant additional time commitment may be required.

In this context, we also recommend that the guidance on **Management Board members' external commitments** is revised (**para 5.4.5**). It is increasingly difficult for investors to accept that a full-time executive can hold up to three non-executive mandates and dedicate sufficient time to his/her main job and Supervisory Board responsibilities. This applies to board commitments in both public and private companies. In order to increase accountability, we recommend that Supervisory Board Chairmen confirm that all members of their Management and Supervisory Boards have adequate time to fulfil their responsibilities.

Finally, it would be helpful if the GCGC highlighted the need for a **regular review** of Supervisory Board composition, mix of experience, skills and diversity. This could be facilitated by a recommendation for **annual re-election of Supervisory Board members** as is normal practice in many markets, although we understand that this may need to be accompanied by certain changes in the regulation of general shareholders meetings. Shareholders should be able to vote on elections of all new directors to Supervisory Boards.

Compliance management system

AllianzGI supports the proposal to improve disclosure on companies' compliance management systems (**para 4.1.3**) via the annual corporate governance report. We believe that this should be proposed either as a recommendation or a suggestion in the Code, and should be extended to cover internal controls, and disclosure of key risks and uncertainties, including mitigation measures, as well as material environmental, social and corporate governance factors. Effectiveness of those mechanisms should be tested at least annually and monitored on a continuous basis by the Supervisory Board.

Management Board compensation (para 4.2.2 to 4.2.5)

AllianzGI encourages the Commission to promote robust compensation practices by companies. Investors evaluate effectiveness of remuneration practices based on appropriateness of remuneration structures, performance KPIs and targets, performance periods, total remuneration and incentive opportunity, etc. Furthermore, AllianzGI favours share-based incentive schemes over stock options and believes that management should build substantial shareholdings in the company to ensure alignment of interests with shareholders. Finally, we believe that remuneration reports should be put to a shareholder vote annually, and not only when material changes to the policy are being made.

Supervisory Board dialogue with investors

We welcome the statement that the Supervisory Board Chairman should be prepared to engage in dialogue with investors (**para 5.2**). This is critical for institutional investors' ability to exercise their ownership rights actively and responsibly (**para 2.1.3**). The positive impact such a dialogue can have on all market participants

Allianz Global Investors

is underscored in the “Guiding principles for the dialogue between investors and German supervisory boards”[2] published in July 2016 by a group of German institutional investors, companies, associations and academics. This is the first step in defining an appropriate framework for a dialogue between investors and Supervisory Boards. As a global investor, we note that many countries (including France, Netherlands, Italy, United Kingdom, etc.) have demonstrated successfully that a regular dialogue between boards and shareholders can become the norm. We believe that Germany should follow this best practice. However, we recommend that the Code allow companies to decide how to approach engagement with investors to ensure that these are quality conversations and not a compliance exercise.

We also suggest that an opportunity to have a dialogue with investors should be open to all Supervisory Board members and especially the chairmen of the Remuneration, Nomination and Audit committees. This would also help to address instances where having a dialogue with the Chairman may not be appropriate. Engagement with investors can be undertaken in many different ways, from one-on-one meetings with individual directors to group meetings with either the entire Supervisory Board or a combination of Supervisory and Management Board members. It is therefore important that companies have flexibility in finding the best solution to engage in a dialogue with their investors.

We hope our comments are helpful and look forward to the publication of the new edition of the GCGC. In the meantime, should you have any questions or need further information, please do not hesitate to contact us.

Henrike Kulmann
ESG Research Analyst
Email: Henrike.Kulmann@allianzgi.com

Ingo R Mainert
CIO Multi Asset Europe
Email: Ingo.Mainert@allianzgi.com

Eugenia Unanyants-Jackson
Global Head of ESG Research
Email: Eugenia.Jackson@allianzgi.com

Jörg de Vries-Hippen
CIO Equity Europe
Email: Joerg.deVries-Hippen@allianzgi.com

[2] https://www.bvi.de/uploads/tx_news/2016_07_11_Guiding_Principles_for_Shareholder_Communications_with_Supervisory_Board.pdf