

Explanations on the request for an additional agenda item

Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (German Protective Association for Security Holdings, DSW), on behalf of BayernInvest Kapitalverwaltungsgesellschaft mbH, has requested an addition to the agenda and, in this context, has proposed a change to the Articles of Incorporation. The additional agenda item was published together with a statement by the Board of Management.

In its statement, the Board of Management recommends voting against the change to the Articles of Incorporation proposed by DSW.

Accordingly, we refer in particular to the following reasons that speak against the change to the Articles of Incorporation proposed by DSW:

- The change to the Articles of Incorporation proposed by DSW intends to apply provisions of German stock corporation law that are tailored to conventional in-person shareholders' meetings to the virtual shareholders' meeting. However, this approach would endanger the proper direction of a virtual shareholders' meeting, which cannot be in the interest of the shareholders.
- As yet, there are no legal possibilities for designing a virtual shareholders' meeting that is largely the same as an in-person meeting and holding it in a legally watertight manner. Landgericht Köln (the Cologne District Court) made this clear in an indicative court order from February 26, 2021. In the opinion of the court, there are currently no standardized, legally compliant platforms for online shareholders' meetings that also meet the legal requirements for larger corporations. In contrast to DSW's assumption, which they do not substantiate, this means that without special statutory arrangements, the chair of a virtual shareholders' meeting does not have sufficient authority to ensure an orderly flow of the shareholders' meeting.
- For this reason, the change to the Articles of Incorporation proposed by DSW would also result in legal uncertainty, because the interplay between the changes to the Articles of Incorporation and the legal provisions that permit virtual shareholders' meetings independently of the COVID-19 pandemic – which have yet to be defined – is completely open. In turn, this would result in incalculable risks of legal challenges to resolutions that are passed by any such virtual shareholders' meetings in future. As such, the change to the Articles of Incorporation proposed by DSW could endanger resolutions of the shareholders' meeting and their implementation and thus have a specific, direct, negative impact on shareholders' interests.
- Companies that would be affected by a change to the Articles of Incorporation like the one proposed here by DSW could feel forced to waive the option of holding a virtual shareholders' meeting with the special statutory arrangements that are currently still valid this year and instead delay their shareholders' meeting until a date when an in-person meeting would be possible. This is the only way they could reduce the risk of legal challenges in the interest of their company and its shareholders.
- Whether a change to the Articles of Incorporation is needed at all to secure the rights of shareholders at a virtual shareholders' meeting is questionable. In the interim, the legislator has strengthened shareholders' rights under the exemptions implemented due to the pandemic. It is unlikely that future legislative steps toward virtual shareholders' meetings would reduce shareholders' rights. Digital formats do not require fewer shareholders' rights; if anything, they merely require a different approach to exercising these rights, along with rights of the chairperson that are adapted to the respective digital format. In contrast, falling back on the provisions for in-person meetings, as proposed in DSW's resolution, will not lead anywhere.

