

New York

Date: 23 May 2012

To: Bulgarian Chess Federation, English Chess Federation, US Chess Federation

From: White & Case LLP

Re: Analysis of and Response to FIDE's Proposed Amendments to the FIDE Statutes and Electoral Regulations

You have asked us to conduct an analysis of the changes proposed by FIDE in its draft "Amended Statutes and Electoral Regulations," and to provide you with a critique of, and counter-proposals for, the most problematic changes. You have also provided us with documents prepared by FIDE and entitled "Statement on REVIEW OF STATUTES for federations," "Annex 5," and "Annex 6."

We have discussed with you your general concept and philosophy regarding the kind of Statutes and Electoral Regulations you believe are appropriate for FIDE. Specifically, you would like to see FIDE governed by rules that enhance the organization's transparency, fairness, and credibility and the sovereignty of member-federations, and which wherever possible track international standards and best practices. With this aim, you have described for us certain of the historical electoral and governance problems created by the current FIDE Statutes and Electoral Regulations. You have also asked us to address the main linguistic shortcomings in the proposed changes.

As per your instructions, we have focused our attention only on the principal issues that arise from FIDE's drafts. While many of our comments are substantive, we have also taken the time to correct the most egregious English-language mistakes and drafting errors. We have, however, in accordance with your instructions, been minimalistic in our approach, proposing changes only where they are critical. We do recommend that in due course the FIDE Statutes and Electoral Regulations undergo a more comprehensive substantive and linguistic review, to ensure that other problems not addressed here are corrected.

White & Case LLP

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I. Statutes

We begin our analysis with the main points arising from FIDE's amendments to the Statutes¹:

1. Admission of National Chess Federations

FIDE's proposal: In Article 2.2, FIDE proposes lowering the level of review for provisional admission of a national chess federation from the Executive Board to the Presidential Board. FIDE also proposes allowing the Executive Board (in addition to the General Assembly) to pronounce final membership for a national chess federation.

Our proposal: The Executive Board alone should decide on questions of provisional admission and the General Assembly alone should decide on questions of final membership for national chess federations. We also suggest codifying FIDE's practice regarding voting rights for new federations, i.e., that a new federation may first vote at the General Assembly following the General Assembly at which it was granted final admittance as a member of FIDE.

Rationale: As FIDE is a member-based organization, the quality of FIDE's membership is vital to the credibility and success of the organization. In accord with best practices, the process of accepting new members and associated scrutiny should be conducted at the highest levels of FIDE. This will ensure that only federations that are credible, serious and capable of exercising the rights and duties that come with FIDE membership are admitted. Therefore, heightened examination of applications should remain the norm, with the Executive Board deciding on applications for provisional membership and the entire General Assembly, FIDE's supreme body in which all FIDE's members are represented, reviewing and deciding on applications for permanent membership. Likewise, in this spirit, new federations should undergo a period of acclimatization to FIDE before they obtain the right to vote.

Specific suggestion:

(i) The first paragraph of Article 2.2 should remain as it is.

(ii) A new third paragraph should be added, as follows:

“A new member federation shall be entitled to vote for the first time on any matter at the first General Assembly meeting following the General Assembly meeting at which it was granted final admittance as a member of FIDE.”

* * *

¹ Red text indicates FIDE's proposed changes, blue text indicates our proposed changes.

2. Obligation of Members to Support FIDE in All Its Chess Activities

FIDE's proposal: FIDE would amend the third sentence of Article 2.4 to state that FIDE members, in addition to acknowledging the statutes, regulations, resolutions and decisions of FIDE, "are obliged to support FIDE actively in all chess activities" instead of "its chess activities" as the sentence currently reads.

Our proposal: The original language should be retained.

Rationale: The proposed amendment is too broad and vague. It has potential to stifle dissent and discussion within FIDE, and should be rejected.

Specific suggestion: Leave the third sentence of Article 2.4 untouched.

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3. FIDE Members Should Provide Important Information to FIDE

FIDE's proposal: In Article 2.4, FIDE proposes to eliminate the important reporting requirements from member federations contained in points (e) to (h) and in the last paragraph of this article.

Our proposal: Leave Article 2.4 (e) to (h) and its last paragraph unchanged.

Rationale: As we propose maintaining federation membership requirements as a prerequisite for running for FIDE office (see ER item 2, below), we suggest leaving these provisions, particularly point (g), in place. In any event, the data contained in these provisions is important and useful to FIDE in pursuing the development of chess worldwide.

Specific suggestion: Maintain Article 2.4 from subsection (e) to the end unchanged except that in the first sentence of the last paragraph of Article 2.4, we propose to replace the first use of the word "President" with the word "Presidential Board."

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4. Retain Three-Person Committee to Investigate Severe Offences

FIDE's proposal: In Article 2.5, FIDE leaves in place the provision allowing for exclusion of a federation if that federation is "guilty of a severe offence against the statutes, regulations, resolutions or decisions, or acts against the principles of FIDE," but removes the provision according to which the Presidential Board can set up a "committee of three persons to investigate and examine" the offence or act, and to report its findings to the General Assembly or the Executive Board.

Our proposal: In Article 2.5 leave the final sentence providing for the establishment by the Presidential Board of a three-person committee to investigate offences against the statutes, regulations, resolutions or decisions, or acts against the principles of FIDE, and make such action mandatory instead of permissive.

Rationale: In those rare cases where a credible suspicion arises that a federation is guilty of a severe offence against FIDE's rules and decisions or of an act against FIDE's principles, it would be important to have a small neutral group designated to look into the matter and report back.

Specific suggestion: The last sentence of the current text of Article 2.5 should be modified as follows:

“When there is a credible reason to suspect such a severe offence against the statutes, regulations, resolutions or decisions or such an act against the principles of FIDE, ~~In the case mentioned in the 4th paragraph~~ the Presidential Board ~~can~~ shall set up a neutral committee of three persons to investigate and examine an offence (~~or an act against the principles of FIDE~~) or act; the committee shall report to the General Assembly or the Executive Board in non-Olympiad years.”

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5. Unnecessary and Confusing Heading Before Article 2.8 on “Right to Attend the Annual Congress”

FIDE's proposal: Under its new proposed heading of “Non-Voting Organizations and Individuals with a right to attend the Annual Congress,” FIDE appears to seek in Articles 2.8 and 2.9 to limit those who may attend, and thus contribute to, the bi-annual General Assembly meeting and the Executive Board meeting during those years when there is no General Assembly.

Our proposal: This heading should be deleted and FIDE's proposed Articles 2.8 and 2.9 should be conformed grammatically in its absence.

Rationale: Attendance at the General Assembly is regulated in Chapter 4 of the Statutes and attendance at the Executive Board is regulated in Chapter 5 of the Statutes. The proposed heading in Chapter 2, which concerns FIDE members, their rights and their duties, creates uncertainty and confusion as to which provision governs and who has the right to attend these meetings.

Specific suggestion:

(i) Delete the heading “Non-Voting Organizations and Individuals with a right to attend the Annual Congress” before FIDE's new Article 2.8.

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(ii) In FIDE's new Article 2.8, return the word "are" after the words "Affiliated international organisations".

(iii) In FIDE's new Article 2.9, replace the word "Individuals" with the words "Individual members are:".

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6. Removal of Unapproved and Duplicate FIDE Positions; Only General Assembly May Create Additional Positions; Elected Officials May Not Hold Other Remunerated FIDE Positions; Procedure to Fill FIDE Offices that Become Vacant During a Term

FIDE's proposal: In Chapter 3, (i) FIDE proposes eliminating the Marketing and PR Director, CEO Development and Commercial Director, but does not propose to regulate who within FIDE may create additional positions. (ii) FIDE's draft also fails to prevent elected officials from holding certain other remunerated positions within FIDE. (iii) And FIDE's draft fails to provide a clear and consistent procedure for the filling of positions that become vacant during a term. While FIDE has a provision on vacancies on the Presidential Board in Article 7.2 of the Statutes, this provision does not account for other vacancies in FIDE positions and is in any event unclear.

Our proposal: (i) We understand that you support the removal of the Marketing and PR Director, CEO Development and Commercial Director, for the reason that these positions were created in an unclear manner and have been filled by the FIDE President as political patronage. In light of this, we propose that Article 3 be further amended to state that only the General Assembly may create additional positions. (ii) An elected FIDE official should not be permitted to also hold another remunerated position within the organization, with the exception of temporary positions on the Appeals Committee and as arbiters. If an elected FIDE official should be appointed to any other remunerated position, he should resign his elected position immediately. (iii) The FIDE Statutes should contain provisions regulating how a FIDE position which becomes vacant during a term can be filled until the next elections.

Rationale: (i) The General Assembly should have a voice on all official FIDE positions. (ii) In the interest of preventing conflicts of interest and the appearance of conflicts of interest, elected FIDE officials should not also simultaneously hold positions in FIDE that are appointed and remunerated. An exception should be made for the Appeals Committee and arbiter roles, as it is beneficial to chess (and in some cases may be required) to have high-ranking FIDE officials involved in these functions. (iii) There should be a clear and consistent procedure for the filling of FIDE positions that become vacant during a term.

Specific suggestion:

Modify FIDE's amended first paragraph in Chapter 3 (which follows "s." on the list of FIDE officials and organizations), as follows:

“Only the General Assembly may create additional FIDE positions.

The President and all other FIDE officials and organizations are either elected by the General Assembly or appointed (i.e., nominated by the President and confirmed by the General Assembly), as the case may be, for a period of four years. ~~The Executive Director shall remain in office until he resigns or his appointment terminated by the President on confirmation by the General Assembly.~~

Elected FIDE officials may not simultaneously hold any other position within the organization that is remunerated (with the exception of positions on the Appeals Committee or as arbiters). If an elected FIDE official is appointed to or otherwise assumes any such other remunerated position within FIDE, he must immediately resign his elected position.

~~Whenre an elected FIDE office n interim election is necessitated by resignation or death, the person elected shall serve for the remainder of the normal election period. —elected position becomes is vacated~~ for any reason during pendency of a term, the Presidential Board may make an interim appointment to fill the office until the next General Assembly. If the next General Assembly is in a non-election year, there will be a special election in accordance with Article [5] of the Electoral Regulations to fill the position for the remainder of the term.

When an appointed FIDE office becomes vacant for any reason during pendency of a term, the President may make an interim appointment to fill the office until the next General Assembly. If the next General Assembly is in a non-election year, the appointment will be subject to confirmation by the General Assembly in accordance with Article [5] of the Electoral Regulations. If the President’s nominee is rejected by the General Assembly, the President may propose a different candidate for confirmation by the General Assembly.”

Delete the second paragraph of Article 7.2 of the Statutes.

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7. Article 4.3: Language Correction to paragraph 1; Participation of Counselors at the General Assembly

FIDE’s proposal: (i) FIDE proposes changes to the first paragraph of Article 4.3 that are unintelligible as drafted and appear not to work.

(ii) Further in Article 4.3, FIDE proposes reducing the number of counselors who may aid representatives from two to one. Also, although Article 4.2 states that the General Assembly “is composed of,” among others, “counselors,” FIDE provides no specific authority for such counselors to speak at the General Assembly.

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Our proposal: (i) We have attempted to decipher what FIDE is trying to say in the first paragraph of Article 4.3 and in doing so have also considered the current version of this provision. We provide our proposal below. It describes who may represent a federation at the General Assembly and incorporates the current practice by which, in the absence of a federation's Delegate, the federation's President may represent that federation without a proxy. (ii) Leave the number of possible counselors assisting member-federations at two and ensure the counselors' right to speak at the General Assembly.

Rationale: (i) The FIDE Handbook needs to be precisely drafted, in good English, to provide clarity of operations and avoid future conflicts. FIDE practice allows federation Presidents to represent their federations in the absence of the Delegate, and this practice should be clearly codified in the rules. (ii) We understand that the presence of counselors – who can offer various kinds of expertise – at the General Assembly can be quite helpful. Their involvement can serve to nip conflicts in the bud by promoting healthy and informed discussion and debate at the General Assembly.

Specific suggestion:

(i) Replace FIDE's amended Article 4.3, first paragraph with the following:

“A member-federation may be represented at the General Assembly (1) by its Delegate who must belong to the member-federation that he represents and have been elected or appointed Delegate by the appropriate body of that federation, or (2) if the Delegate is absent, (a) by the President of the member-federation or (b) by another person provided that such person (i) has been duly accredited by letter for such representation by the duly elected or appointed officials of the member-federation in accordance with the requirements for proxies set forth in Article 4.19 of these Statutes and (ii) belongs to the member federation granting the proxy or is the official representative of another member-federation at the General Assembly (whether as its Delegate or, in the absence thereof, as its President or by means of a Proxy).”

(ii) Modify FIDE's proposed amendment to Article 4.3, third paragraph as follows:

“A representative may be aided by ~~one or two~~ two counselors, each of whom shall have the right to address the General Assembly. The names of the counselors must be advised to the FIDE Secretariat by 17:00 on the day before the opening session of the General Assembly by a duly authorised official of the counseled federation. In cases of unexpected unavailability of the named counselors, others may be substituted after this deadline provided that a duly authorized official of the counseled federation informs the Secretariat of the change without delay.”

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8. Amendments to Article 4.4 to Clarify the Process of Motions of Order

FIDE's proposal: In its proposed amendments to Article 4.4, FIDE seeks to streamline the process for making motions of order at the General Assembly.

Our proposal: This effort is a good start, but Article 4.4 should be further amended to show that (i) any member federation attending the General Assembly may make a motion of order, and (ii) the chairman of the meeting must have such motions considered and decided upon at once by the General Assembly in so far as they do not entail an interruption of the session, and even in the latter case if, upon adequate inquiry by the chairman, the motion is seconded by another member-federation.

Rationale: These changes are required to ensure that order is kept by the chairman of the meeting while at the same time respecting the voices of those present.

Specific suggestion: Modify FIDE's proposed amendments to Article 4.4 as follows:

~~“The discussions may be carried through on the basis of a speaker's list to be kept by the General Secretary. the chairman can take the floor as often as required also outside the order of the speaker's list. Motions of order (closing of the speaker's list, closing of the discussion, adjournment of the agenda point, removing the point from the agenda) may be made at any time on a point under discussion by any member federation. The chairman of the meeting must have these motions considered and decided upon at once by the General Assembly in so far as they do not entail an interruption of the session, and even in the latter case if, upon adequate inquiry by the chairman, the motion is seconded by another member-federation.”~~

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9. Clarity in Reporting Decisions by the General Assembly

FIDE's proposal: In Article 4.12, FIDE proposes eliminating the requirement that all decisions of the General Assembly be given an alpha-numeric designation.

Our proposal: The requirement for alpha-numeric designation of all decisions of the General Assembly should be retained.

Rationale: Such designations are useful and serve to provide order in the records of the General Assembly and enhance accountability.

Specific suggestion: Article 4.12, paragraph 4 should be retained.

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10. Amendments to the Electoral Regulations Only by the General Assembly and Only by Two-Thirds Majority

FIDE's proposal: In its new Article 4.18, FIDE proposes that the Electoral Regulations be approved by a simple majority in the General Assembly, while retaining in Article 4.16 the 2/3-majority vote required to approve changes to the Statutes. FIDE also does not exclude amendments to the Electoral Regulations from the powers that are transferred to the Executive Board under Article 4.1 when the General Assembly is not in session (whereas FIDE does exclude such amendments from the powers of the Presidential Board in Article 7.1). FIDE also does not provide for the implementation, publication and explanation of changes made by the General Assembly to the Statutes, Standing Orders or Electoral Regulations.

Our proposal: (i) Amendments to the Electoral Regulations should require a 2/3-majority vote of the General Assembly. (ii) Any changes made by the General Assembly to the Statutes, Standing Orders or Electoral Regulations should be implemented by the Secretariat and published on the FIDE website within a short period after their adoption, along with an explanatory note.

Rationale: (i) The Electoral Regulations are essential to running fair elections and they have been the subject of much confusion and two recent arbitrations at the Court of Arbitration for Sport. Because of their great importance to FIDE, they should be treated equally with the Statutes for purposes of amendments. (ii) In addition, the rules should specify which FIDE body implements any changes to the Statutes, Standing Orders or Electoral Regulations. Publication and explanation of these changes offers many advantages, including creating a record for those who may have missed the General Assembly or parts of it.

Specific suggestion:

Modify Article 4.1 as follows:

“When the General Assembly is not in session its powers are transferred to the Executive Board. However, the Executive Board cannot take decisions on the following:

- ...
- [Changes to Electoral Regulations.](#)”

Modify FIDE's proposed changes to Article 4.16 as follows:

“[The Statutes](#) can be changed [only](#) by the General Assembly [and](#) [only](#) upon proposal by the President, the Executive Board, Presidential Board or any member-federation. Two thirds of the votes delivered without taking into account abstentions are required to effect such changes.”

Modify FIDE's proposed changes to Article 4.17 as follows:

“Decisions made by the General Assembly concerning the statutes, the standing orders or the electoral regulations will come into effect on the last day of the General Assembly, after the General Assembly is closed. Changes to the statutes, the standing orders or the electoral regulations shall be implemented by the Secretariat, and shall be published on the FIDE website within one week of the close of the General Assembly meeting at which they were adopted, along with a note explaining the changes. ~~except amendments to Financial Regulations which come into operation on the first day of the next fiscal year.~~”

Modify the second sentence of FIDE’s proposed Article 4.18 as follows:

“The Electoral regulations can be changed only by the General Assembly by two thirds of the votes delivered without taking into account abstentions.”

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11. Presidential Board Decisions on Matters Within the Competence of the General Assembly or the Executive Board Should be Reviewable by Those Bodies; Transparency in the Affairs of the Presidential Board; Inclusion of Continental Presidents in Steering Committee

FIDE’s proposal: In Article 7.1, FIDE proposes to delete the sentence giving the General Assembly the power to review decisions of the Presidential Board on matters within the competency of the General Assembly.

In Article 7.2, FIDE updates the description of the Steering Committee.

In Article 7.4, FIDE (i) proposes eliminating publication on FIDE’s website of the agenda of Presidential Board meetings, (ii) declines to give Presidential Board decisions an alpha-numeric designation and (iii) limits distribution of the final minutes of the Presidential Board to members of the Board.

Our proposal: As to Article 7.1, the General Assembly’s power to review decisions of the Presidential Board on matters within the competency of the General Assembly should be maintained and clarified and should be streamlined with the provision in Article 4.1 that “all decisions taken by the Executive Board may be reviewed by the following General Assembly.” It is self-evident that the General Assembly should be able to review decisions on matters within its competency that are delegated to lower bodies when the General Assembly is not in session.

As to Article 7.2, you have told us that you believe that the Steering Committee should be expanded to include the Continental Presidents and we support this proposal.

As to Article 7.4, (i) the Presidential Board agenda should be published on FIDE’s website, (ii) Presidential Board decisions should be clearly marked with alpha-numeric designations, and (iii) the minutes of Presidential Board meetings should be accessible to the entire FIDE community

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via publication on FIDE's website, with the caveat that confidential matters may be redacted, as determined by a majority of the members of the Presidential Board present at the relevant meeting.

Rationale: All of the proposed changes to these articles will enhance transparency, accountability and member participation in FIDE. Inclusion of the Continental Presidents in the Steering Committee will ensure wider representation on a body whose purpose is to "discuss urgent and developing issues."

Specific suggestion:

Modify FIDE's proposed amendments to Article 7.1 as follows:

"... The Presidential Board also exercises the rights of the General Assembly and the Executive Board between meetings of the General Assembly and the Executive Board respectively. ~~Such power~~ including decisions which require a 3/4 majority vote pursuant to ~~Standing Order to Article 1.2. Any rights so exercised have no continuing effect beyond the following General Assembly unless so authorized by the requisite majority vote.~~ All decisions taken by the Presidential Board pursuant to these rights may be reviewed by the following Executive Board and General Assembly meetings. ..."

Modify the first sentence of the final paragraph of FIDE's proposed amendments to Article 7.2 (see also ER item 1 below, where our proposed new phrase "FIDE's Principal Officers" is explained) as follows:

"A Steering Committee consisting of FIDE's Principal Officers and the four Continental Presidents ~~the President, Deputy President, First Vice President, General Secretary, and Treasurer and two Vice Presidents elected on the Presidential ticket,~~ can convene as necessary to discuss urgent and developing issues."

Modify FIDE's proposed amendments to Article 7.4 as follows:

"The Agenda of the meetings of the Presidential Board, as ~~well~~ as the relevant documents shall reach members and be published on FIDE's website at least one week before the meeting. ~~(or be published on the official website of FIDE).~~ Any other item ~~will be banned~~ will be excluded from discussion unless two thirds of the members present decide otherwise. ~~except in an emergency situation, where evidence must be clearly established and is approved by a vote of two thirds of those members present.~~ Commissions' reports ~~shall~~ must be received ~~one month~~ two weeks before the Presidential Board. All decisions of the Presidential Board shall be given an alpha-numeric designation.

The final minutes shall be distributed ~~to members of the Presidential Board~~ and published on FIDE's website (subject to the redaction of confidential matters as determined by a majority of the Presidential Board members present at the meeting) no later than one month after a meeting is closed."

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12. The Electoral Committee (ELE)

FIDE’s proposal: In Section 8C – Elected Commissions and Committees, FIDE proposes a new Electoral Committee (ELE) to “deal with complaints arising from all elections.” In principle, this is a good development, but the proposal lacks sufficient explanation as to how the ELE would work. For example, (i) sub-section 3.3 of FIDE’s proposal states that the “decision of the ELE is final” but explains nothing about the procedures or votes by which such a decision would be reached. In addition, (ii) sub-section 2.1 of FIDE’s proposal gives too much power to the Continental Presidents to nominate their continents’ representatives. (iii) Sub-section 3.4 of FIDE’s version requires “any dispute against the decision of the ELE” to be “referred to the competent Swiss judicial organ in conformity with Swiss legal procedure,” when such disputes should instead continue to be referred to the Court of Arbitration for Sport in Lausanne, Switzerland (see Statutes item 14 below for more on this issue). (iv) Finally, in its proposed sub-section 3.5, FIDE invests control over proxies in the Electoral Committee.

Our proposal: (i) Clarify the ELE’s procedures on taking decisions; (ii) allow what FIDE renames the Continental Associations to elect their representative to the Electoral Committee according to their internal rules; (iii) retain the Court of Arbitration for Sport as the exclusive venue for the resolution of FIDE’s electoral (and all other) disputes; (iv) eliminate sub-section 3.5 as per our suggestion below to have a neutral third-party accounting firm selected from the “Big Four” verify the proxies (see ER item 14 below); (v) preclude members of the ELE constituted for an election from being elected or appointed to any Presidential Board position in that election (FIDE has this requirement in the first paragraph of Article 3 of its proposed Electoral Regulations, but it does not fit there because that paragraph deals with the scrutineers).

Rationale: (i) For a matter as important as electoral supervision, the decision-making procedures of the ELE should be clear and transparent to all member-federations, (ii) allowing the Continental Associations to elect their ELE representative according to their internal procedures respects the autonomy of the Continental Associations, provides for a wider voice in selection, and eliminates the risk of favoritism; (iii) for the many reasons described in Statutes item 14 below, the Court of Arbitration for Sport should have jurisdiction over FIDE electoral disputes, and not the Swiss judicial system; (iv) as discussed in ER item 14 below, international best practice suggests having a neutral outside party verify proxies and other information related to elections in FIDE; (v) ELE members monitoring a given election or appointment proceeding should have no interest, or even appearance of interest, in the outcome.

Specific suggestion: Modify FIDE’s proposal on the Electoral Committee (ELE) as follows:

“~~Other Committees~~

Electoral Committee (ELE)

1-Objectives

1.1-This Committee has the competence assigned by the Statutes and Electoral Regulations.

2-Membership

2.1- The ELE shall consist of the Chairman of the Constitutional Committee and one representative from each Continent. Each Continental Association shall elect its representative in accordance with its internal rules and shall inform the Secretariat of the person so elected at least four months prior to the opening of the General Assembly at which elections shall take place.

2.2- The members of the ELE constituted for an election cannot be elected or appointed to any Presidential Board position in that election.

2.3- The ELE shall automatically dissolve within one month of the close of the General Assembly meeting at which the elections took place or, if later, within one month after it has reached a decision on all complaints that have been brought before it.

3-Proceedings

3.1- The Chairman of the ELE shall be the Chairman of the Constitutional Committee

3.2- All complaints arising from FIDE's quadrennial elections, including but not limited to eligibility of candidates, any conduct preceding the elections and appointments, and the conduct of the elections and appointments, must be brought before the ELE.

3.2.1-Any such complaint must be addressed to the ELE in writing within two weeks following the event which gives rise to the complaint.

3.2.2- The ELE must investigate all complaints brought to it.

3.2.3- The ELE decides by majority vote. In the event of a tie, the vote of the Chairman of the ELE shall be decisive.

3.2.4 - The ELE must issue a reasoned decision in English in writing to the complainant within 10 days of its receipt of the complaint.

3.3- All decisions of the ELE are final.

3.4- ~~Any decision is~~ pute against the decision of the ELE may be appealed ~~ust be referred to the~~ Court of Arbitration for Sport in accordance with Article 14.

~~3.5- The Committee will meet 10 days before the General Assembly. It will circulate to all members a list of proxies received, confirming or denying their validity."~~

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13. Comments on Chapter 9

FIDE's proposal: (i) FIDE's proposed amendment to Article 9.1 contains a linguistic problem as it appears to require that the Presidential Board approve all contracts only after they have been signed by the FIDE President. (ii) In Article 9.4, FIDE proposes that the FIDE President's decisions may be appealed to the General Assembly, but does not deal with situations where the next General Assembly may be far in the future. (iii) And in Article 9.8, FIDE proposes authorizing the FIDE President to "delegate specific tasks to other persons," but fails to provide sufficient oversight.

Our proposal: (i) FIDE's suggestion in Article 9.1 should be clarified to require the Presidential Board to authorize FIDE's entry into any contracts before the FIDE President signs them. (ii) Article 9.4 should be amended to allow for appeal of the President's decisions to the next Executive Board or Presidential Board, if the next General Assembly or Executive Board meeting is not within six months of the decision of the President that is being appealed, and should clarify that any decision of the Executive Board or Presidential Board shall be deemed final for purposes of appeal to the Court of Arbitration for Sport. (iii) Article 9.8 should require that if the FIDE President's delegation of tasks to other persons includes offering a FIDE position, title, or any financial compensation, then it must be approved by three quarters of the next Executive Board and reviewed at the next General Assembly.

Rationale: (i) As to Article 9.1, this appears to be a simple drafting mistake, as of course approval by the Presidential Board of FIDE contracts would only be relevant before the FIDE President signs them.

(ii) As to Article 9.4, when certain national federations recently challenged the President's decision to appoint five Vice Presidents at the 2010 General Assembly at Khanty-Mansiysk instead of the allowed two and to do so out of the statutory order, one of FIDE's arguments was that any review of the decision would have to wait two years until the next General Assembly. If this were the case, the challenged Vice Presidents would have already served half their terms before their appointments were reviewed. It is better in such cases if the challenged decision goes right to the next Executive Board, and that this body's decision can then be appealed, if necessary, to the Court of Arbitration for Sport. Should the next Executive Board meeting itself be scheduled more than six months from the decision in question, then the challenge should be presented to the next Presidential Board, and this body's decision can then be appealed, if necessary, to the Court of Arbitration for Sport.

(iii) As to Article 9.8, you have told us that the FIDE President has appointed allies to FIDE positions, sometimes with titles or with compensation, without providing full transparency and without requesting clear approval. As a check on such behavior generally, any delegation of tasks that is not to an existing FIDE officer and includes some benefit or advantage for that person should be approved by three quarters of the next Executive Board and be reviewed by the next General Assembly.

Specific suggestion:

FIDE's proposed Article 9.1 should be amended as follows:

“The President represents FIDE officially and can solely sign for FIDE. All contracts to be signed by the President shall be approved in advance by the Presidential Board.”

FIDE's proposed Article 9.4 should be amended as follows:

~~“Every party concerned may appeal against the decisions of the President. The President's decisions may be appealed to the General Assembly, unless the next General Assembly is scheduled to take place more than six months after the decision being appealed. In that case, the decision may be appealed to the Executive Board, whose decision shall be deemed the final decision of FIDE on the matter. If the next Executive Board meeting is itself scheduled to take place more than six months after the decision being appealed, the President's decision may be appealed to the Presidential Board, whose decision shall be deemed the final decision of FIDE on the matter.”~~

FIDE's proposed Article 9.8 should be amended as follows:

“In certain cases the FIDE President can also delegate specific tasks to other persons; this includes authorizing in writing other FIDE officials to sign contracts on his behalf, subject to Article 9.1. If such delegation of specific tasks is made to a person who is not a FIDE officer, any compensation, benefit or advantage offered to that person shall (i) require approval by a three-quarter vote of the Executive Board and (ii) be submitted for review to the next General Assembly.”

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14. Court of Arbitration for Sport

FIDE's proposal: In Articles 14.2 and 14.3, FIDE proposes eliminating access to the Court of Arbitration for Sport in Switzerland for “disputes concerning possible violations of the electoral procedure” (14.2) and “other disputes concerning possible violation of statutes or regulations” (14.3). These disputes would instead need to be brought to the Swiss courts.

Our proposal: Leave untouched the CAS's jurisdiction as described in current Article 14.1.

Rationale: FIDE's proposal requiring that the types of cases listed under Articles 14.2 and 14.3 be brought in the Swiss judicial system makes no sense. First, FIDE recognizes the importance of English as the international language by (i) proposing an amendment to Article 1.5 making English FIDE's official language and (ii) retaining English as the official language for the CAS cases it does still allow, under its new Article 14.1. English is the main language of FIDE's official (and informal) communication, and English is not spoken in the Swiss judicial system. Second, it would be a serious mistake for a major international sporting federation like FIDE to

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back away from (i) the international language in resolving our disputes and (ii) a supra-national dispute-resolution forum, which also happens to be the premier sports court in the world. It would be a blow to the federation's prestige and Olympic aspirations. Third, the Court of Arbitration for Sport provides for universal jurisdiction on all matters related to sport, including those occurring within international sports federations and relating to governance. For example, the recent FIFA corruption cases were heard at the CAS. FIDE's attempt to limit the CAS's jurisdiction to disputes about the playing of sport is artificial and appears to arise for political reasons, *i.e.*, to prevent any further challenges to the current FIDE leadership. Fourth, FIDE's proposal will force those bringing cases on the matters listed under new 14.2 and 14.3 to lose their own trusted counsel, and engage new, Swiss lawyers. This is because very few individuals and federations use Swiss counsel, but rather tend to engage lawyers in their home jurisdictions – these lawyers may practice at the CAS but not in Swiss court. Finally, this proposal appears to be designed simply to give more work to FIDE's existing Swiss lawyers (who probably were involved in making this proposal).

Specific suggestion: Consistent with FIDE's Olympic aspirations and international membership, leave current Article 14.1 untouched.

* * *

15. No Conflicts of Interest

FIDE's proposal: In its revisions, FIDE fails to include any provision that would protect the integrity of FIDE by preventing conflicts of interest or the appearance of conflicts of interest.

Our proposal: Add a blanket conflicts-of-interest policy that covers all FIDE officials, be they elected or appointed. Include disclosure obligations for income derived from service on an Appeals Committee or as an arbiter.

Rationale: We understand from you that FIDE's leadership has been rife with conflicts of interest, some reported and many more not. Best practices demand that every serious organization have a conflicts-of-interest policy and abide by it. While service on an Appeals Committee or as an arbiter may be commendable, any income derived from this service should be disclosed.

Specific suggestion: We propose adding the following language as the last paragraph of Chapter 3 of the FIDE Statutes:

“Whenever any FIDE official has a financial or personal interest in any matter coming before any FIDE body on which he has a deliberative voice or vote, the affected person shall (i) fully disclose the nature of the interest to the relevant body and (ii) withdraw from discussion, lobbying, and voting on the matter. Any transaction or vote involving a potential conflict of interest shall be approved only when the necessary majority of disinterested FIDE officials needed to approve the matter in question determine that it is in the best interest of FIDE to do so. The minutes of meetings at which such votes are

taken shall record all disclosures, abstentions, rationales for approval, and votes. Any income derived by a FIDE official from service on an Appeals Committee or as an arbiter shall be disclosed to the next General Assembly meeting.”

* * *

II. Electoral Regulations

We now turn to an analysis of FIDE’s proposed amendments to the FIDE Electoral Regulations:

1. Ensure Direct Elections for FIDE’s Principal Officers

FIDE’s proposal: FIDE leaves the Presidential-ticket system of elections in place for electing the FIDE President, Deputy President, two Vice Presidents, General Secretary and Treasurer (ER 1.1)

Our proposal: Return FIDE to direct democracy through individually elected mandates while still ensuring that at least one female member will serve on the Presidential Board. (See ER item 3 below.)

Rationale: The Presidential-ticket system severely limits voter choice by requiring an all-or-nothing decision on a slate of six individuals who will lead FIDE for four years. It is a much better practice for the organization to have individual elections for each post.

Specific suggestion:

Rename ER 1 as “Elections for FIDE’s Principal Officers”

Replace ER 1.1 as follows:

“There shall be individual elections for the offices of President, Deputy President, two Vice Presidents, General Secretary and Treasurer, which shall be called ‘FIDE’s Principal Officers.’”

Modify ER 1.2 to replace the words “Presidential ticket” with “FIDE’s Principal Officers”.

Modify ER 1.5 as follows:

“The elections for the President, Deputy President, two Vice Presidents, General Secretary and Treasurer.~~Presidential ticket~~ shall be held in that order and prior to ~~the all~~ other elections.”

Modify ER 1.6 as follows:

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“On the day of the elections, the candidates for President ~~of each Presidential ticket~~ will have a maximum of fifteen (15) minutes on stage to present ~~their~~^{his} programmes. The order of appearance shall be decided by the drawing of lots.”

Modify FIDE’s ER 2.5/Existing ER 2.1 as follows:

“A defeated candidate from elections for FIDE’s Principal Officers~~the Presidential ticket~~ may accept nomination for any other elected~~office~~ immediately after the elections for FIDE’s Principal Officers have ended,~~immediately following the election of the combined ticket.~~”

Modify FIDE’s amended ER 4.5 as follows (see ER item 13, below):

“~~Any complaint regarding nomination and election conditions of the Presidential ticket has to~~^{shall} be addressed to the Electoral Committee in accordance with the deadlines and procedures in the last item of Article 8 of the Statutes entitled ‘Electoral Committee’~~within one month following the deadline for nominations.~~”

Modify the last paragraph of FIDE’s amended Article 7.2 of the Statutes (see also explanation at Statutes item 11 above) as follows:

“A Steering Committee consisting of FIDE’s Principal Officers and the four Continental Presidents~~the President, Deputy President, First Vice President, General Secretary, and Treasurer and two Vice Presidents elected on the Presidential ticket,~~ can convene as necessary to discuss urgent and developing issues.”

* * *

2. Federations, not Individuals, Should Nominate Candidates for FIDE’s Principal Offices; Candidates For FIDE Offices Shall Have Been a Member of Their Federation at Least One Year Before the General Assembly

FIDE’s proposal: (i) In its proposed ER 1.2, FIDE suggests stripping from federations the power to nominate candidates for FIDE’s Principal Officers and the Continental Presidents, and investing that power in the “President of a federation” alone. You have told us, however, the interests of a given federation President do not always equate with those of his federation. Further, you have described (and due to our presence at the last General Assembly we have seen) situations where two individuals have claimed to speak for their federation. Such potential discord and politicization should not be imported into the nominating process. (ii) FIDE also eliminates here a candidate’s one-year membership requirement in a federation to be eligible to run for or be appointed to FIDE positions. Thus FIDE essentially allows anyone to become a FIDE official, regardless of connection to the chess community.

Our proposal: (i) The nominating power should remain in federations, and not be vested in individuals. (ii) In addition, the requirement that candidates for any elected or appointed FIDE

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position be members of a FIDE federation for at least one year before the General Assembly at which the candidate is elected or appointed should remain. (iii) Remove the requirement in ER 1.2 that nominations for Continental Presidents be sent to the FIDE Secretariat.

Rationale: (i) FIDE is a federation of federations, and the sovereignty of federations is paramount. Requiring federations to take nomination decisions encourages discussion and deliberation about candidates before they reach the FIDE arena. This is particularly important given that both FIDE and we propose limits on the number of office-holders per federation (see ER item 5, below). Vesting the nomination power in one individual (the federation president) could lead to abuses, and there is no good reason for this proposed amendment. (ii) In addition, candidates for any FIDE position should be members of the chess community, and requiring membership in a federation for at least one year ensures this result. The requirement is not onerous and will prevent very famous or wealthy individuals with no real connection to chess from running. This rule should be included in new ER 4.1 so that it will apply to all elected and appointed FIDE officials, not just to FIDE's Principal Officers. (iii) Continental Associations are sovereigns within FIDE and should set their own procedures for nominations, consistent with FIDE regulations, as per Article 6.1 of the Statutes. Candidates for Continental President should be nominated consistent with the rules and procedures of their respective Continental Associations, and there is no need for these nominations to be made through the FIDE Secretariat.

Specific suggestion:

ER 1.2 should read as follows:

“Nominations for ~~the Presidential ticket and Continental Presidents~~ FIDE's Principal Offices must reach the ~~FIDE~~ Secretariat at least three months before the opening of the General Assembly. ~~To be elected, each~~ In order to be eligible to run for a position as one of FIDE's Principal Officers, a ~~Each~~ candidate ~~must have~~ shall ~~been~~ in writing by ~~a President of~~ a federation. ~~He/She should~~ The candidate shall have been a member of ~~their~~ a federation for at least one year before the General Assembly at which the candidate is running for office. ~~A President of a federation is entitled to nominate only one candidate for each position.~~”

Modify FIDE's proposal for the first sentence of ER 1.3 as follows:

“The ~~President of a federation of~~ federation nominating a candidate ~~shall~~ shall ~~sends the~~ its signed letter of nomination to ~~the FIDE~~ Secretariat ~~within the deadline in Article 1.2 by fax and registered mail.~~ The FIDE Secretariat shall forthwith confirm receipt of the letter to the federation and invite the nominee to confirm his acceptance. Nominees shall confirm ~~at the same time their acceptance of the nomination to the Secretariat~~ within the deadline in Article 1.2 to the Secretariat or, if later, within 48 hours after receipt of the above-mentioned invitation of the Secretariat.”

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In ER “4. Electoral conditions,” change the first paragraph to the following text and number it ER 4.1(a) (see also ER item 11 below):

“A candidate for any elected or appointed FIDE position shall have been a member of the federation supporting his candidacy for at least one year before the General Assembly at which he is running for office.”

* * *

3. The FIDE President Should Not Be Permitted to Appoint an Unlimited Number of Vice Presidents

FIDE’s proposal: In its new ER 2, FIDE proposes that the President be allowed to appoint an unlimited number of Vice Presidents with voting rights and certain financial perks and states that the General Assembly will be invited to confirm the President’s proposal. FIDE also proposes that the General Assembly subsequently elect the same number of Vice President as those nominated by the FIDE President, but does not address the situation in which the FIDE President chooses not to appoint any Vice Presidents. Finally, FIDE proposes that the President need not reveal the names of the appointed Vice Presidents until after the election of the elected Vice Presidents.

Our proposal: (i) The current version of ER 2, second and third paragraphs, which allows the President to appoint two Vice Presidents before the General Assembly votes on three additional Vice Presidents should be maintained and enforced. These paragraphs should be clarified as to the roles of the FIDE President and the General Assembly in the process. (ii) In order to ensure that a woman serves on the Presidential Board while at the same time allowing for direct elections of FIDE’s Principal Officers, the FIDE President must appoint at least one female Vice President if a woman is not elected among FIDE’s Principal Officers.

Rationale: (i) You have informed us that FIDE does not need a proliferation of Vice Presidents with voting rights and cannot bear the extra expense of such unnecessary positions. You indicated that FIDE is making work for the Vice Presidents that it has, and that this amendment is a poorly disguised effort to ensure that the ruling group has more allies on the Presidential and Executive Boards. As a legal matter under FIDE’s proposal there is nothing to stop the FIDE President from nominating 10, 15 or 20 Vice Presidents, which would require the election of a like number. The proposal is unwieldy and will lead to uncertainty (“How many Vice Presidents will the President appoint this year?”) and facilitate corruption. Indeed, you have alerted us that FIDE President Ilyumzhinov publicly declared at the last Executive Board meeting that he would make everyone present a Vice President if he could. If this amendment passes, it would be within his power to do that. In addition, in proposing this complex scheme, FIDE fails to anticipate what would happen if the FIDE President decides not to appoint any Vice Presidents. Would that mean that there would be no elected Vice Presidents either? Particularly problematic from a democratic perspective is FIDE’s proposal that the FIDE President be entitled to announce the names of his Vice Presidential nominees only after the General Assembly has

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approved the number of Vice-Presidential positions that the FIDE President wants and has elected the elected Vice Presidents.

Abuse by FIDE of this provision of the Electoral Regulations was the cause of an arbitration brought at the Court of Arbitration for Sport by the English and Georgian Chess Federations. At the General Assembly meeting in Khanty-Mansiysk, Mr. Ilyumzhinov appointed five, not three, Vice Presidents and did so after, not before, the election of three additional Vice Presidents. This was in clear violation of the rules, and the proposed changes would institutionalize the President's ability to appoint an arbitrary and shifting number of Vice Presidents.

(ii) The current requirement that there be at least one woman on the Presidential ticket was introduced into the FIDE Electoral Regulations as a result of the recommendation of the International Olympic Committee that women be more represented in international sports federations. Our proposal that, if a woman is not elected among FIDE's Principal Officers, the FIDE President must appoint at least one female Vice President continues to ensure that there will be a woman on the Presidential Board, while at the same time allowing for direct elections for FIDE's Principal Officers.

Specific suggestion:

(i) Delete FIDE's proposed ER 2.1.

(ii) Proposed ER 2.2 should become new ER 2.1 and be modified as follows:

"2.2-1 After the elections for FIDE's Principal Officers, the General Assembly shall adjourn and the Continental Assemblies-Associations shall convene to elect their Continental Presidents and Vice-Deputy President."

(iii) Proposed ER 2.3 should become new ER 2.2 and be modified as follows (see also ER item 4 below):

"2.4-2 Upon the conclusion of all Continental Association elections, tThe General Assembly then-reconvenes and takes note ofconfirms- the appointments of the Continental Presidents and Deputy Vice-Presidents."

(iii) Amend the second paragraph of current ER 2 and insert it as a new ER 2.3, as follows:

"2.3 Immediately thereafter, the President shall be entitled to nominate for The nomination and-confirmation by the General Assembly two additional of the 2-appointed Vice Presidents and no more, who shall have voting rights on the Presidential Board and the financial benefits provided for in the financial regulations.be made in the General Assembly immediately after the election of the Continental Presidents. If no woman has been elected as one of FIDE's Principal Officers, then at least one of the two additional Vice Presidents nominated by the President and confirmed by the General Assembly shall be a woman."

(iv) Amend the third paragraph of current ER 2 and insert it as a new ER 2.4, as follows:

“2.4 After the appointment of the 2 President-nominated Vice Presidents, the individual elections of 3 additional Vice Presidents take place.”

(v) Insert the language that is in the second paragraph of FIDE’s proposed ER 2.4 in a new ER 2.5.

(iv) Delete FIDE’s proposed ER 2.6, as it is duplicative of the last sentence in FIDE’s proposed ER 1.2.

* * *

4. The Continental Associations are Sovereign Bodies and their Officers Should Not Be Subject to General Assembly Confirmation

FIDE’s proposal: (i) Despite the fact that the newly renamed Continental Associations should be sovereign bodies within FIDE, FIDE in its proposed ER 2.3 and Article 6.3 of the Statutes requires General Assembly confirmation of the Continental Presidents and Deputy Presidents. (ii) FIDE references a Continental “Deputy President” in its proposed ER 2.2 and Article 6.3 of the Statutes, but Continental “Vice-Presidents” in its proposed ER 2.3.

Our proposal: (i) FIDE’s proposed ER 2.3 should be rejected (see ER item 3 above) and similar language found in Article 6.3 of the Statutes should be deleted. (ii) The language in FIDE’s proposed ER 2.3 should be harmonized with that in proposed ER 2.2 and Article 6.3 of the Statutes.

Rationale: (i) The Continental Assemblies should be autonomous, sovereign entities within FIDE, and as such the General Assembly should not be empowered to confirm or reject their decisions, but simply take note of them. (ii) Inaccuracies in the FIDE Handbook should be eliminated.

Specific suggestion:

(i) Modify FIDE’s proposed Article 6.3 of the Statutes as follows:

“Each Continental **Association** will be responsible for ~~choosing~~ **electing** a President **and Deputy President (then confirmed by the General Assembly)** and 4 Representatives to the Executive Board; other officers ~~may be chosen~~ **elected** by the Continental Association **may** include but are not limited to a Treasurer and Secretary. ~~Each~~**The Continental President is a member of the FIDE Presidential Board and shall report on Continental activities.**”

(ii) Change FIDE’s proposed ER 2.3 to ER 2.2, and modify it as follows (see also ER item 3 above):

~~“2.1–2 Upon the conclusion of all Continental Association elections, The General Assembly then reconvenes and takes note of ~~confirms~~ the appointments of the Continental Presidents and Deputy Vice-Presidents.”~~

* * *

5. Clarity of Language in the New Provisions Regarding No More Than Two FIDE Office-Holders from One Federation

FIDE’s proposal: In ER 2.7, FIDE proposes language that appears to address the issue that multiple candidates from one federation may be nominated by various other federations and appears to limit the number of members from any federation that may hold an elected FIDE office to one. The language offered, however, is unintelligible and must be rejected.

Our proposal: Limit FIDE office-holders to a maximum of two from any given federation.

Rationale: It is indeed best for FIDE to have officer-holders come from various federations and not be disproportionately concentrated from the same federations. But limiting office-holders to only one candidate per federation could deprive FIDE of strong and energetic leadership.

Specific suggestion: ER 2.7 should be renumbered as ER 2.6 per ER item 3 above and read as follows:

“Upon the election or appointment of two candidates from any given FIDE member-federation to any FIDE office, any other candidates from that member-federation must withdraw their candidacies. If a successful candidate is a member of more than one federation, he shall for these purposes be deemed to be a member of any federation with no members as FIDE officers; if all of his federations have members as FIDE officers, the official shall choose which federation he represents.”

* * *

6. Clarifying Process for Appointing Scrutineers

FIDE’s proposal: In its proposed ER 3, first paragraph, FIDE seeks to continue the practice of having the General Assembly appoint three scrutineers to secure a fair and impartial electoral process, but fails to specify the process for approval. FIDE also proposes to have the scrutineers preside only over the elections for the Presidential ticket.

Our proposal: We are in favor of continuing the use of scrutineers, but propose that (i) the appointment process be described more precisely, (ii) the language in this provision be corrected, and (iii) the scrutineers preside over all elections and appointments that take place in the General Assembly for positions on the Presidential Board, and (iv) the scrutineers be precluded from election or appointment to any Presidential Board position in an election for which they serve as scrutineers (as explained in Statutes item 12 above, we also propose to eliminate the same

requirement for the Electoral Committee in this provision, as that requirement is better dealt with in the provisions about the ELE in the Statutes).

Rationale: (i) Imprecision in the process for selecting the scrutineers could lead to contention during and after elections. (ii) There is no good reason for the scrutineers not to preside over the other elections and appointments to the Presidential Board that take place at the General Assembly. (iii) To ensure transparency and avoid conflicts of interest, scrutineers should not be eligible to hold positions arising from the elections and appointments that they monitor.

Specific suggestion:

(i) Modify FIDE's proposed ER 3, first paragraph as follows:

“To secure a fair and impartial electoral process, three scrutineers, a chairman and two members, shall be appointed for the elections by the General Assembly immediately after the roll call on the first day of the General Assembly. The ~~Chairman of the~~ scrutineers presides ~~over the electoral process for all elections and appointments to the Presidential Board (except for the Continental Presidents) the Presidential ticket~~. Any representative of a member federation not running for a position on the Presidential Board may nominate a candidate for scrutineer. Each scrutineer shall be appointed individually by the General Assembly by show of hands. The first scrutineer appointed shall be the Chairman. The scrutineers or members of the Electoral Committee appointed for an election cannot be nominated or elected for any Presidential Board position in that election.”

7. Tie-Break Voting Should Apply to All Elections

FIDE's proposal: FIDE proposes tie-breaking procedures in ER 1.7 which are duplicative of the tie-breaking provisions in the ninth paragraph of current ER 3.

Our proposal: We suggest deleting FIDE's proposed ER 1.7 on tie-break voting as it is duplicative of the ninth paragraph of current ER 3. The language on voting procedures in the eight and ninth paragraph of ER 3 should be clarified.

Rationale: FIDE's addition of ER 1.7 is unnecessary and could create confusion with the tie-break language in the ninth paragraph of ER 3. The voting-procedure language in the eighth and ninth paragraphs of ER3 should cover ties arising from all elections in the General Assembly (not, as is currently case, only ties in run-off elections) and needs to be clarified.

Specific suggestion: Delete FIDE's proposed ER 1.7 and amend the eighth and ninth paragraphs of ER 3 as follows.

“For all elections, a~~A~~ majority of the votes cast, not counting abstentions, shall be required ~~for the election of the officers individually and collectively where necessary. If there is a tie, the voting is repeated until the tie is broken.~~

If three or more persons are nominated for the same offices or office, the candidates that receive 50% plus one of the votes cast, are elected on the first ballot. Thereafter, ~~(a)~~ ~~the candidates receiving most votes on the second ballot are elected to the vacant number of offices. If there is a tie, the voting is repeated until the tie is broken ~~a case of a tie, a new ballot is held between the candidates that tied.~~~~

~~(b)~~ The election procedure for the Continental offices, will follow the regulations in each Continent.”

* * *

8. Improved English on Procedure for Casting Ballots

FIDE’s proposal: In ER 3, fifth paragraph, FIDE proposes minor linguistic changes to the manner in which ballots are placed in the ballot-box.

Our proposal: Improve the English and drafting of this provision and specify transparency.

Rationale: You have informed us of your concern that the ballot box be situated in such a manner that there can be no fraud. The opportunity should be taken to address this concern and at the same time to tighten the language describing voting procedures.

Specific suggestion: Replace ER 3, fifth paragraph as follows:

“During elections, each federation shall be called in alphabetical order to place its ballot in the ballot box, which shall have a slot on top, shall be openly visible to the General Assembly from all sides, and shall be separated from any other object.

* * *

9. Clarification of Language Mistake Regarding Entry Into Office for FIDE Officials; Removal of Duplication Regarding Entry Into Force of Electoral Regulations

FIDE’s proposal: (i) In the last paragraph of Article 3 of the ER, FIDE fails to clarify that newly elected or appointed FIDE officials enter duty only upon the close of the General Assembly at which they were elected or appointed. (ii) FIDE forgets to delete ER 4.4, which is duplicative of Article 4.17 of the Statutes.

Our proposal: (i) Clarify that newly elected or appointed FIDE officials have no authority until the close of the General Assembly at which they were elected or appointed. (ii) Delete duplicative ER 4.4.

Rationale: (i) FIDE’s wording in this section is imprecise and would allow newly elected or appointed FIDE officials to act in their official capacity on the last day of the General Assembly at which they were elected or appointed. (ii) Duplicative parts of the rules should be deleted.

Specific suggestion:

(i) Modify FIDE’s proposed last paragraph of ER 3 as follows:

“All ~~elected~~ FIDE officials will enter ~~on~~ duty ~~on the last day~~ upon the close of the General Assembly at which where they were elected or appointed. ~~just after the minutes are approved. This will be the last item of the General Assembly minutes.~~

(ii) Delete ER 4.4.

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10. Elections Should be the First Event at the General Assembly In an Election Year

FIDE’s proposal: FIDE maintains in Article 4.1 of its proposed Electoral Regulations the provision that elections shall be held after the report of the President and that of the Treasurer.

Our proposal: In an election year, the elections should be the first event at the General Assembly.

Rationale: The reports of the incumbent President and Treasurer should follow the elections, so as to avoid giving the incumbents, should they be running, any unfair advantage over the challengers.

Specific suggestion: FIDE’s proposed Article 4.1 of the Electoral Regulations should be amended as follows and renumbered as Article 4.2 (see ER item 2, above and ER item 11, below and note that the text of what FIDE now calls ER 4.2 shall remain unchanged but shall be renumbered as ER 4.3):

“~~The e~~Elections shall be held immediately after the roll call on the first day of the General Assembly. After the elections, the first order of business shall be~~after the consideration of~~ the report of the President and that of the Treasurer ~~on the first day of the General Assembly (GA ’97).~~”

* * *

11. Candidates for FIDE Office Should Not Run Against the Will of Their National Federation

FIDE’s proposal: By cutting previous ER 4, second paragraph, FIDE removes the restriction on the election of candidates running against the will of their national federations, except in exceptional cases (which had been undefined).

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Our proposal: Do not allow, as a general matter, a candidate to be elected or appointed to a FIDE office against the will of his national federation (if a candidate belongs to multiple federation, only the federation in whose name the candidate seeks to serve may veto his candidacy), and (ii) replace “in exceptional cases” with a requirement of agreement by two thirds of the General Assembly.

Rationale: (i) As FIDE appears to have proposed that only one official come from any one federation, and we have proposed two (see ER item 5, above), federations should have a say on those individuals who represents them. Therefore, in order to hold FIDE office, a candidate should have the support and endorsement of the federation in whose name he seeks to serve. (ii) In exceptional cases of disagreement, the candidate denied by his federation should be permitted to make his case to the General Assembly.

Specific suggestion: Retain the second paragraph of current ER 4 with the following modifications and renumber it as ER 4.1(b) (see also ER item 2, above):

“No ~~candidate~~~~person~~ can be elected or appointed to a FIDE office against the will of his national federation. If a candidate is a member of more than one national federation, for purposes of this provision “national federation” means the federation in whose name the candidate seeks to hold office. Promptly after becoming a candidate for FIDE office, the candidate must notify the federation in whose name he seeks to hold office. Federations that are against the nomination of one of their members for a FIDE office ~~must,~~~~should~~ notify~~raise~~ their objection to FIDE and the candidate as soon as possible after becoming aware of the candidate’s intention to hold office in the federation’s names~~to such a nomination before the election.~~

This stipulation may be waived by the General Assembly only on approval by two-thirds of the General Assembly, upon application by the candidate being objected to by his national federation~~in exceptional cases.~~ ”

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12. Clarification of the Nomination and Confirmation Process; Definition of “Confirmation”

FIDE’s proposal: In its proposed ER 4.3, FIDE fails to clarify the manner in which positions not elected according to points 1 and 2 of the Electoral Regulations are confirmed by the General Assembly. FIDE also continues to make provision for confirmation of such positions by the Executive Board or Presidential Board, even though, as far as we know, all positions are to be filled at the General Assembly for a term of four years.

Our proposal: The General Assembly, as FIDE’s highest body, should have the final word on all FIDE positions. In situations where the FIDE President nominates a candidate, the General Assembly should confirm the candidate by majority vote via show of hands.

Rationale: Procedures for confirmation need to be clear to avoid confusion and conflicts. This approach is required under Swiss law.

Specific suggestion: Amend FIDE's proposed ER 4.3 as follows and renumber it as ER 4.4:

“~~For a~~All ~~other~~ positions that are not elected according to point 1 and 2 in the Electoral regulations or according to any other FIDE Regulations, ~~the are appointed by the~~ FIDE President ~~nominates a candidate~~ and ~~such candidate is subject to confirmation~~~~ed~~approved by the General Assembly, ~~the Executive Board or the Presidential Board.~~ The General Assembly confirms a candidate with a simple majority by a show of hands. If a President's nominee is rejected by the General Assembly, the President may propose a different candidate for confirmation by the General Assembly.”

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13. The Jurisdiction and Procedures of the Electoral Committee Should Be Set Out in the Statutes and the Electoral Regulations Should Simply Refer Back to the Statutes

FIDE's proposal: In ERs 4.5 and 4.6, FIDE proposes (i) vesting responsibility for addressing complaints regarding nomination and election conditions in the newly created Electoral Committee and requiring any complaint to be addressed to the Electoral Committee within one month following the deadline for nominations, and (ii) granting the ELE competence to deal with all complaints arising from all elections.

Our proposal: Regulate the jurisdiction and procedures of the ELE in Chapter 8 of the Statutes and simply refer back to those provisions in the Electoral Regulations.

Rationale: It makes sense to regulate the jurisdiction and procedures of the ELE fully in the provisions of the Statutes that establish the ELE. Having provisions on the workings and deadlines of the ELE in both the Statutes and the Electoral Regulations is confusing.

Specific suggestion:

(i) Amend FIDE's proposed ER 4.5 as follows (see also Statutes item 12 above). It shall remain ER 4.5:

“~~Any complaint regarding nomination and election conditions of the Presidential ticket has to~~shall be addressed to the Electoral Committee in accordance with deadlines and procedures in the last item of Chapter 8 of the Statutes entitled 'Electoral Committee'.~~within one month following the deadline for nominations.~~”

(ii) Delete FIDE's proposed ER 4.6.

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14. Proxies

FIDE's proposal: We understand from you that proxy irregularities have been a frequent component of the problems with FIDE elections. In its amendments, FIDE moves the proxy rules from Article 4 of the Statutes to new Article 5 of the Electoral Regulations. In its proposed new ER 5, FIDE (i) requires that proxies be the Delegate or official "authorized by the federation, as last registered with FIDE" but does not take sufficient steps to ensure that information on those individuals is up to date and published on the FIDE website; (ii) fails to ensure that proxies are only exercised if the Delegate and the President of a federation are actually absent from the General Assembly; and (iii) fails to specify how the list of those entitled to vote shall be determined and transmitted to all members.

Our proposal: We suggest that (i) The proxy rules should remain in Article 4 of the Statutes, which regulates the General Assembly; (ii) A neutral third-party accounting firm selected from the "Big Four" should be used to verify the accuracy of the information on the FIDE website regarding those federation officials (President, Delegate, General Secretary) permitted to give a proxy; (iii) Proxies should only be validly given from member-federations whose Delegate and President will be actually absent from the FIDE elections; (iv) The final list of all those entitled to vote at the General Assembly, including proxies, should be determined by the same "Big Four" accounting firm that is engaged to verify the accuracy of the FIDE website, and should be published on the FIDE website 10 days before the General Assembly; (v) The provision allowing emergency approval by the General Assembly of proxies notified by other means should be eliminated and the registry closed two weeks before the opening session of the General Assembly.

Rationale: (i) The proxy provisions should be in Article 4 of the Statutes because proxies may also be relevant in non-election years and in election years on non-election issues; (ii) Incumbents should not be able to use their control over the FIDE website and data published on it to affect the proxy process. International best practice suggests using a neutral third-party accounting firm selected from the "Big Four" to verify and certify members' officer information on the FIDE website. In this manner, the authority to assign proxies will be fully transparent; (iii) Given that proxies provide an opportunity for voting irregularities, they should only be allowed if the legitimate vote-wielding representatives of a member-federation, i.e., the Delegate and the President, are actually absent from the General Assembly. If the member-federation's Delegate or President is present, he should cast the member-federation's vote and not be permitted to assign it to anyone else; (iv) Having the same "Big Four" accounting firm that verified and certified members' information also compile the list of those authorized to vote at the General Assembly, including proxies, is efficient and transparent. Publishing the list on the FIDE website makes logistical sense as Delegates and others may be traveling and may not receive other forms of communication; (v) The formalities for proxies are not onerous (a simple letter suffices) and there is thus no need for "notification by other means." FIDE itself proposes in its ER 5.1 that, in election years, once the register is closed further proxies not be accepted until after the elections have been concluded, and there is no good reason to circumvent this fair

and reasonable requirement. In any event, the existing rule failed to provide a clear procedure for such emergency intervention, and should be eliminated.

Specific suggestion: This entire section on proxies should remain in Chapter 4 of the Statutes, as the last item there. In addition, we propose the following amendments to the text:

“4.[19] Proxies

~~5.1(1)~~ A member federation can assign a proxy ~~can be assigned to a member federation~~ only by written authorisation. The letter of assignment must have a signature of the ~~Permanent~~ Delegate or of an official authorised by the federation, as last registered with FIDE. FIDE shall engage a professional, neutral third-party accounting firm selected from the “Big Four” (“Examiner”) to ensure that the identities of all authorized officials of member-federations are accurately reported on the FIDE website at least three weeks before the General Assembly. ~~In emergency the General Assembly can approve a Proxy on notification by other means. — Moved from 4.3 of Statutes~~

~~5.2(2)~~ All proxies must be registered at the ~~FIDE~~ Secretariat ~~at the Congress by 1700 on the day two weeks~~ before the opening session of the General Assembly. After this deadline, ~~in election years,~~ further proxies will not be accepted. ~~until the register is reopened after elections have been concluded~~

~~5.3(3)~~ The ~~Electoral Committee~~ Examiner shall ~~convene~~ establish the legality of the proxies 10 days before the opening of the General Assembly. ~~Congress under the Chairmanship of the Chairman of the Constitutional Committee. — The Electoral Committee shall~~ This Committee meets before the General Assembly to establish the legality of ~~It will examine all~~ the proxies. ~~It will examine the proxies~~ presented for verification and will compare the information contained in them with the latest information on the FIDE website. Upon completion of the Examiner’s verification of the proxies, ~~The register will then close and the list of those entitled to vote at the General Assembly shall be sent to all member federations and published on the FIDE website at least one week before the opening of the General Assembly.~~

(4) Proxies are only valid in the actual absence from the General Assembly of a federation’s Delegate and President.

~~5.4(5)~~ Every representative is permitted to represent, besides his own, only one additional federation, in the General Assembly. If a representative has been assigned a proxy by more federations than allowed, ~~Valid proxies can be re-assigned to a new federation by the person to whom they have been assigned,~~ up to 17.00 on the day before the opening of the General Assembly. The Secretariat shall submit such re-assigned proxies to the Examiner, which shall cause to be published on the FIDE website the final list of proxies at 19.00 on the day before the opening of the General Assembly or as soon as possible thereafter. ~~In particular, but not exclusively, this procedure may be used by those~~

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~~persons that have been given more than one proxy. Every representative is permitted to represent, besides his own, only one additional federation, in the General Assembly. At the Executive Board of the Congress, the Continental Presidents shall each nominate one person for the Committee to establish the legality of the votes. Three persons shall be selected by lot to form the Committee.~~

~~5.5(6) At the opening of the General Assembly, the Examiner~~Electoral Committee~~ reports on the proxies. A roll call ~~to confirm there is a quorum,~~ will then take place. ~~to establish the quorum.~~~~

~~(7) For a proxy to be valid, it must be signed by any of the following accredited officials of the federation: President, Permanent-Delegate or General Secretary of the federation. This will be based on the latest official notification from the federation as shown on the FIDE web site. The proxy can either be an original or a copy of a letter (photocopied, sent by fax or scanned). ~~No other formal elements are necessary for the validity of the proxy.~~ Where two or more proxies are received and there is a conflict, the order of precedence shall be as follows:~~

1. Proxies received from the President
2. Proxies received from the Permanent Delegate
3. Proxies received from the General Secretary

~~Where the order of precedence is established and there is still a conflict, the latest most recent fax, ~~or~~ letter or scanned document shall be deemed to be valid.”~~

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15. Special Elections to Fill FIDE Positions that Become Vacant During a Term

FIDE’s proposal: As explained above, FIDE fails to provide a clear and consistent procedure for filling FIDE positions that become vacant during a term (see Statutes item 6 above). Article 7.2 of the proposed Statutes deals only with positions on the Presidential Board and is in any event unclear and unsatisfactory.

Our proposal: As explained above, we propose that, if an elected FIDE position becomes vacant during a term, the Presidential Board may appoint someone to fill the vacancy on an interim basis until the next General Assembly. If the next General Assembly is during a non-election year, the position must be filled for the remainder of the term via special election. We also propose that, if an appointed FIDE office becomes vacant during a term, the President may appoint someone to fill the vacancy on an interim basis until the next General Assembly. If the next General Assembly is in a non-election year, the appointment is subject to confirmation by the General Assembly. Our proposed ER 5 regulates these special elections.

Rationale: There should be a clear and consistent procedure for filling positions that become vacant during a term. Our proposal makes practical sense. It allows the Presidential Board to

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appoint someone on an interim basis to occupy an elected position in FIDE that has been vacated and the President to appoint someone on an interim basis to occupy an appointed position in FIDE that has been vacated, but it is the next General Assembly that should determine who holds a such position until the expiry of that position's term.

Specific suggestion: Add new Section 5 to the ERs as follows:

“5. Special Elections

Where a special election must be held pursuant to Chapter 3 of the Statutes, the procedures shall be the same as those for FIDE elections held in the normal course under the Statutes and Electoral Regulations, and the relevant provisions of these Electoral Regulations shall apply by analogy to such election.”

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16. Term Limits

FIDE's proposal: FIDE fails to address the danger of possible lifetime tenure for the FIDE President.

Our proposal: The FIDE President should serve no more than two terms.

Rationale: Two mandates for the President is a sufficient period of service in FIDE. Reasonable term limits provide transparency, new ideas and energy, and healthy turn-over. FIDE's rule on this matter should mirror that of the most advanced democratic institutions.

Specific suggestion: Add new Section 6 to the ERs as follows:

“No FIDE President shall serve for more than two terms. This rule shall be applied retrospectively to terms already served by any FIDE President.”

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