

## Errors in AGM voting procedure

At the Annual General Meeting on 16 October 2010, elections took place for the ECF Board. In the case of the candidature of Malcolm Pein for one of the two Non-Executive Director positions, errors were made in the voting procedure.

- (1) Prior to the vote, a member of the Governance Committee expressed the view that the executive directors should not be allowed to vote on the election of a Non-Executive Director.

Whilst this was a legitimate **personal** view (which individual executive directors may, of course, share), it is allowable within the rules of the Federation for directors to vote. This misunderstanding may have affected the votes cast.

- (2) Prior to the vote, the same member of the Governance Committee expressed the view that “postal votes” should not be counted, because new points had been raised on the day which could not have been known to those not present at the meeting.

Under Company Law, postal votes as such are not allowed. However, anyone entitled to vote but unable to attend the meeting may grant a “directed proxy”, which is an instruction (normally to the Chairman) to vote in a particular way. Those who give their proxy in this way accept that they will not have the opportunity to hear the discussion at the meeting itself.

As a result of section 324A of the Companies Act 2006, the Chairman should follow the instructions given via the directed proxies, regardless of what is said in the meeting discussion.

The view that “postal votes” should not be counted was understood to refer to directed proxies and, given its source in a member of the Governance Committee, was given the weight of a ruling. In fact, an official Governance ruling could only have been given by the holder of the Chairman of the Governance Committee’s proxy at the meeting. This was not sought.

- (3) Following a close hand vote, a “card vote” was requested. The rules allow for a more formal voting mechanism (referred to in the Articles as a “poll”) to be used if requested by sufficient members or following a ruling by the Chairman. In this case, the Chairman made such a ruling. While a poll can normally be taken in any manner the Chairman requires, in the specific case of an election the Procedural Bye Laws requires the poll to be conducted as a secret ballot. As the cards were counted in open meeting, the wrong procedure was adopted.
- (4) During the card vote, the Chairman asked the tellers whether the directed proxies were to be included and was told that they should not. This was an error, and the votes should have been counted.

The result of the card vote was 49 in favour, 62 against. As a result, the candidate was not elected.

Had the directed proxies (22 for, 4 against) been counted, the totals would have been 71 in favour, 66 against.

Based on the result declared at the AGM, there was a vacancy for Non-Executive Director. Under the ECF Articles, the authority to appoint someone to the role reverted to the Board.

In view of the serious errors committed, the incoming Chief Executive sought guidance from the Chairman of the Governance Committee.

Under normal circumstances, it would be inappropriate for the Board to appoint someone to its ranks who had failed to be elected at the AGM. Given the impact of the errors made, the advice given was that it would be acceptable for the Board to appoint Malcolm Pein, as a pragmatic means of correcting the effect of the procedural mistakes.

Before the Board formally considered the matter, the Chief Executive spoke with Malcolm Pein, apologised for the procedural errors and explained the situation. Malcolm Pein accepted the apology and advised the Chief Executive that, in view of the number of votes against cast at the AGM, he would not wish to be considered further for the role.

Following this, the Board met by teleconference on 1<sup>st</sup> November 2010 and appointed Jack Rudd to the vacant directorship.

The ECF apologises unreservedly for the errors made at the AGM and recognises that they must not be repeated. The situation was not helped by the need to replace, at extremely short notice, the scheduled Chairman of the meeting. The Governance Committee will be giving the matter further consideration to ensure that all necessary lessons are learned and appropriate guidance issued for future occasions.

*Andrew Farthing,*

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