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FOR  
AGENDA

SM/76/145

June 25, 1976

To: Members of the Executive Board

From: The Secretary


Subject: Second Amendment of the Articles - A First Syllabus of  
Changes in and Additions to Policies and Decisions of  
the Fund

Attached for consideration by the Executive Directors is a memorandum prepared by the staff setting forth the actions that need to be taken in connection with the amended Articles of Agreement.

This subject will be brought to the agenda for discussion on a date to be announced.

Att: (1)

Other Distribution:  
Department Heads



INTERNATIONAL MONETARY FUND

Second Amendment of the Articles--A First Syllabus of Changes  
in and Additions to Policies and Decisions of the Fund

Prepared by the Legal Department

(In consultation with the Exchange and Trade Relations,  
Research, and Treasurer's Departments)

Approved by Joseph Gold

June 23, 1976

Introduction

When the second amendment of the Fund's Articles becomes effective, numerous Resolutions, By-Laws, Rules and Regulations, and decisions setting forth policies and interpretations will have to be modified or terminated and new ones adopted. These elements in the Fund's corpus juris are referred to below as subordinate provisions. This memorandum summarizes the changes that will need to be made without specifying at this time the modifications to be made in individual subordinate provisions. The references to provisions of the Articles are to the Articles as they will be when the second amendment becomes effective. This memorandum has been called a first syllabus because the pervasive impact of the second amendment makes it impossible to be certain at this stage that all the consequences have been foreseen.

It must be recalled that under Schedule B, paragraph 6:

"All rules and regulations, rates, procedures, and decisions in effect at the date of the second amendment of this Agreement shall remain in effect until they are changed in accordance with the provisions of this Agreement."

The references to "decisions" in the rest of this memorandum should not be understood to mean that a particular action will be formulated as a decision in the sense in which that term is used, for example, in connection with Selected Decisions and not as Rules and Regulations or as another kind of subordinate provision. The form can be determined in due course in relation to the substance of the action.

Categories of decision

The decisions that will be necessary as a result of the second amendment can be divided into those that are editorial and those that are

substantive. This division is no more than approximate because editorial changes may raise issues of principle.

Substantive changes fall into four classes:

- (i) Decisions that will have to be in place by the time that the second amendment becomes effective in order to enable the Fund to continue its activities, both financial and regulatory, without pause or impediment. If decisions are not taken, Schedule R, paragraph 6 may prevent a hiatus, but in view of the novelty of many provisions the existing subordinate provisions will not fill all gaps.
- (ii) Decisions that will probably be necessary with respect to the financial and regulatory activities of the Fund but probably with not the same degree of urgency as decisions in class (i) above. It must be made clear that decisions in class (i) are legally necessary, whereas those in class (ii) may not be legally necessary or may not be necessary at once even though they may be desirable or even highly desirable. The decision in class (ii)5 below may be regarded as an example that meets the latter criterion.
- (iii) Decisions that will be necessary in connection with an aspect of the Fund's affairs other than those that involve its financial or regulatory activities, but only on some specific future occasion. For example, the rules for the election of Executive Directors will have to be reformulated for the first regular election after the Articles become effective.
- (iv) Decisions that will be necessary only if it is decided to exercise an "enabling" power that does not fall into any of the other classes.

This memorandum is confined to classes (i) and (ii) above. The staff will give priority to class (i) and to any other decisions in class (ii) or in the remaining classes to which the Executive Directors wish the staff to give equal priority. It has been assumed for the purposes of this memorandum, however, that certain enabling powers (class (iv)) will not be exercised forthwith when the second amendment becomes effective. Here again, however, distinctions can be made. For example, it may be reasonably safe to assume that a decision will not be taken forthwith under Article IV, Section 4 that conditions permit the introduction of a system of par values, or that a decision will not be taken forthwith under Article XII, Section 1 to call the Council into existence. There may be less reason to assume that the Fund will not wish to invest promptly under Article XII, Section 6(f). The Executive Directors may wish to discuss questions such as this before the second amendment becomes effective.

### Editorial changes

The texts of most subordinate provisions will have to be amended, if only to reflect the new nomenclature of the Fund (i.e., Departments and Accounts) and the changes in the order and in the numbering of Articles and Sections.

### Substantive changes

#### Class (1)

1. A decision must be adopted regarding the currencies of other members acceptable to the Fund in payment of subscriptions for quota increases by members wishing to make payments in this form under the Sixth General Review and the procedure for obtaining the concurrence of the issuers.

2. New policy decisions will have to be adopted with regard to exchange arrangements maintained by members. The more obvious topics are as follows:

(a) Under Article IV, Section 3(b), the Fund will need to adopt specific principles for the guidance of all members with respect to those [i.e., exchange rate] policies."

(b) Decisions will be needed for the exercise by the Fund of "firm surveillance over the exchange rate policies of members" under Article IV, Section 3(b). The decisions must deal with the provision of information by members, the type and timing of consultations with them, the procedures of the Executive Board in connection with consultations, and any other procedures for enabling the Fund to perform its functions under Article IV, Section 3(a). It will be necessary to consider what should be done with respect to the present decision on central rates.

3. (a) Most of the decisions on the use of the Fund's resources will require editorial changes, but many will raise substantive issues. It may be possible to substitute a single comprehensive and more ordered decision for many of the piecemeal decisions that have accumulated over time.

(b) In order to give operational effect to Article V, Section 3(e) and other provisions (e.g., Article XIX, Section 4), it will be necessary to decide which currencies are "freely usable." A decision will be necessary to establish the procedures for exchanges of currency into freely usable currency.

(c) In accordance with Article V, Section 7(j)(iv), the Fund should adopt regulations on the freely usable currency to be provided by a repurchasing member in exchange for a currency specified by the Fund for repurchase.

(d) A new decision on the selection of currencies for purchases and repurchases (Selected Decisions, 7th Issue, pp. 55-61) will have to be adopted in view of the legal basis that Section 3(d) and Section 7(1) of Article V provide for currency budgets. This decision will affect a number of the other decisions connected with the Fund's financial activities.

(e) A decision on policies and procedures is required by Article V, Section 3(f) on the Fund's sale to participants of SDRs instead of currencies.

4. In order to give operating effect to the amended provisions on repurchase, decisions will be necessary under various provisions of Article V, Section 7 and Schedule B:

- (a) Under Section 7(b) a member will be expected normally to repurchase the Fund's holdings of its currency resulting from purchases and subject to charges as soon as its balance of payments and reserve position improves, and will be required to repurchase if the Fund represents that the member should repurchase in accordance with the provision.
- (b) Section 7(c) requires the repurchase of the Fund's holdings of a member's currency resulting from purchases and subject to charges to be made within five years from the date of each purchase, and authorizes the Fund to prescribe installments for these repurchases. The installments need not be phased in the same way for all purchasers, but the Fund may wish to have a decision establishing a basic policy, and possibly the criteria for departures from it in individual cases.
- (c) Section 7(e) requires the Fund to adopt policies for the repurchase of holdings that do not result from purchases.
- (d) Section 7(1) prescribes the media to be used for repurchase. The necessity for a policy on the selection of currencies has been mentioned already.
- (e) Under Schedule B, paragraph 2, the Fund will be able to decide that repurchase obligations that have accrued in gold shall be deemed to have been discharged by the Fund's acceptance of SDRs in respect of concomitant undertakings to repurchase.
- (f) Schedule B, paragraph 2 will necessitate a decision on acceptable currencies if the Fund decides to receive them instead of SDRs. Under paragraph 4 of Schedule B, the currencies acceptable in discharge of other repurchases will be determined by the decision to be taken under Article V, Section 7(1).

5. New rules on charges will have to be adopted under Article V, Section 8(b) because of the necessity to distinguish between holdings acquired under a policy that has been the subject of an exclusion (i.e., a policy providing for floating alongside the reserve tranche) and other holdings. The present rules cannot be applied under the amended Articles.

6. The rules on remuneration will have to be revised to take into account the fact that under Article V, Section 9 remuneration will no longer be payable in gold, that certain balances of holdings will be excluded from the calculation, and that, when new quotas become effective, the level of holdings (the "norm") determining the amounts of remuneration to be paid will vary, in terms of quota, from member to member.

7. Decisions will be needed in connection with computations under Article V, Section 10 and the maintenance of value of the Fund's holdings of currencies under Article V, Section 11. For example, decisions based on SDR valuation and to establish a procedure for settlement under the latter provision will be necessary.

8. The Fund will have to decide how it proposes to complete the arrangements for the disposition of the gold referred to in Schedule B, paragraph 7.

Class (ii)

1. A policy on purchases and sales of SDRs in exchange for the currencies of other members under Article V, Section 6 will probably be necessary.

2. If the Fund wished to establish a difference between the rate of remuneration and the interest rate on the SDR in accordance with Article V, Section 9, a decision would be necessary for this purpose.

3. A decision or decisions will be necessary to determine what are multiple currency practices and discriminatory currency arrangements under Article VIII, Section 3 and the new provisions on exchange arrangements.

4. Under Article XXX(c)(ii), floating will be possible alongside the reserve tranche for purchases under the buffer stock facility. If this form of floating were to be instituted, a decision would be necessary.

5. It may also be desirable to consider whether purchases under the oil facility shall float alongside the reserve tranche in order to avoid the difficulties that have arisen hitherto in connection with repurchases. A decision to this effect would be taken under Article XXX(c)(iii).