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Room 8-313

#11

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July 28, 1980

To: Members of the Committee on Rules for the 1980
Regular Election of Executive Directors

From: The Committee Secretary

Subject: 1980 Regular Election of Executive Directors - Legal Aspects
and Prospective Timetable

The attached memorandum has been prepared by the staff in response to a request at the July 17 meeting of the Committee. This matter is for consideration by the Committee at its next meeting on Thursday morning, July 31, 1980.

Att: (1)

Other Distribution:
Members of the Executive Board
Department Heads

INTERNATIONAL MONETARY FUND

1980 Regular Election of Executive Directors - Certain
Legal Aspects and Prospective Timetable

Prepared by the Legal Department
(In consultation with the Secretary's Department)

Approved by George P. Nicoletopoulos

July 28, 1980

1. At the July 17 meeting of the Committee on Rules for the 1980 Regular Election of Executive Directors, questions were raised as to what variations might be made in supplemental regulations, including the number of Executive Directors to be elected, that would accommodate a possible change in the quota for China and would take account of possible developments in the composition of constituencies. Of importance in this connection were the procedural aspects for the timing of the adoption of the supplemental regulations in relation to the effective date of any quota increase that may be approved for China.

2. Several members of the Committee noted that the request by China for an increase in its quota and the uncertainty on whether the increase will become effective before the 1980 Regular Election make it difficult to draft and adopt supplemental rules and, in particular, to determine the number of Executive Directors that should be elected in order to meet the "objectives of ensuring that the size of the Executive Board will contribute to the effective dispatch of its business, that a desirable balance will be maintained in the composition of the Executive Board, that the size of constituencies will not place undue burdens on Executive Directors and hinder the efficient conduct of the business of the Executive Board, that members will be as free as possible within the provisions of the Articles and the regulations for the elections to form the constituencies of their choice and that a relative equilibrium will be achieved in the voting power of the constituencies electing Executive Directors." 1/

3. The amount of the increase in the quota for China that the Executive Board may recommend to the Board of Governors, as well as the effective date of the increase, are relevant to the current consideration

1/ Commentary, Chapter O, Section 2(a), p. 64. Report of Executive Board on Second Amendment.

of the supplemental regulations. Assuming a quota for China in the range put forward by the staff for the consideration of the Committee on Increase of Quota for China, the increase may be of a size sufficient for China to elect an Executive Director without assistance from any other member, i.e., making it possible for China to form a constituency by itself. A work sheet setting down various voting figures is being circulated under separate cover.

4. If, before the informal recess, the Executive Board is able to make a recommendation on an increase in China's quota to the Board of Governors for adoption by a vote without meeting, the Executive Board may also be able to make a recommendation on the number of Executive Directors to be elected based on the amount of the quota increase and the expectation that the increase would become effective before the balloting in the 1980 Regular Election. As an alternative, a recommendation on the number of elective Executive Directors could provide that sixteen Executive Directors would be elected if the proposed increase in the quota for China becomes effective before the first ballot in the regular election, otherwise only fifteen Executive Directors would be elected.

5. There was some consideration in the Committee as to whether, in light of the objectives from the Commentary quoted above, the range of any possible increase in the quota for China and other possible developments, there would be a need to increase the number of Executive Directors to be elected in order to maintain the present balance in the composition of the Executive Board. As indicated above, the quota increase recommended may be of a sufficient magnitude to permit China to elect an Executive Director with its own votes. However, it was also noted that the size of China's new quota may not be sufficient to secure China a seat. (In this connection, account should be taken of the fact that, with minor adjustments, constituencies that now have fewer votes than the number that China may obtain could increase their votes to more than those of China after the quota increase.) In that event, it would be possible that China would have to form a constituency with other members in order to elect an Executive Director. A further question was whether China would attempt to form such a constituency if it became apparent that for some reason a quota increase could not become effective before the election. It was also observed that a rearrangement of constituencies might occur whether or not China formed a new one.

In consideration of these possible events, members of the Committee suggested techniques that might be used to give more certainty to the election process and to maintain the number of elective Directors at fifteen if an additional elected Executive Director were not needed to meet the objectives referred to concerning the size and structure of the Board, it being understood that Saudi Arabia would continue to appoint an Executive Director. Certain of these suggestions are discussed below.

6. The first suggestion was that the supplemental regulations include a new rule to the effect that nominations may be made only by a Governor or a group of Governors having at least 4 per cent of the eligible votes. The supplemental regulations provided, in the past, first, that a nomination can be made by one or more Governors and that a Governor can nominate only one person. It would be legally possible to include in the supplemental regulations a provision prescribing that only Governors or groups of Governors with a minimum number of votes would be able to make a nomination, although such a rule may make it somewhat more difficult for members to agree on nominations, particularly in the days immediately before the Annual Meeting when the nominations must be made. In this connection, it should be noted that, if the increase in China's quota were to become effective after the closing time for nominations, this requirement would prevent China from making a nomination even if an increase seemed reasonably assured.

7. A collateral suggestion was that those Governors who nominate a candidate must vote for their nominee. Although a Governor making a nomination is normally expected to vote for his nominee, making this a requirement would limit a Governor's normal freedom to vote as he wishes. In the context of the supplemental regulations, however, it would be possible to telescope, in part, the process of nominating with the balloting by prescribing in the supplemental regulations that the votes of Governors that had made a nomination would be deemed to have been cast for their candidate. Balloting would then only serve the purpose of canvassing the other Governors for their votes. Such a procedure would foreclose the freedom of a Governor to reconsider his position between the time of the nomination and the balloting that has been available under the supplemental regulations adopted in the past.

8. Another suggestion was to maintain, without any provision for an ad hoc exception like that in the 1978 regulations, the principle in Schedule E, paragraph 2, that no person is to be elected unless he receives at least 4 per cent of the eligible votes. This principle would be given effect by a new supplemental regulation that would provide that, if the Executive Directors that were elected on the first ballot were not equal in number to that of the available seats, say 16, the number to be elected would be reduced to 15. If the number elected on the first ballot were 14 or less, a second ballot would be required in which the voting would be for those nominees not elected on the first ballot. The Governors who voted for a nominee not elected on the first ballot, or whose votes increased the total received by a nominee above 9 per cent of the eligible votes, would be able to participate in this second ballot. If only 15 nominees had received more than the requisite 4 per cent needed for election, and there were Governors who had cast their votes for a nominee not elected,

these Governors would be able to designate an Executive Director elected on the first ballot and their votes would be deemed to have counted towards his election. A member whose Governors voted for a nominee not elected would be able, if the usual supplemental rule is maintained, to designate an Executive Director who was elected and have its votes deemed to have counted towards that Executive Director's election.

This suggestion would thus involve the application of a formula for the determination of the number of Executive Directors to be elected. The use of a formula in order to avoid the need of a decision is a technique that has been used by the Fund in connection with other actions that can be taken by a special majority, such as the determination of the rates of charges in the General Department and the rate of interest and charges in the Special Drawing Rights Department.

9. A further suggestion was to keep the number of Executive Directors to be elected at 15 regardless of events before the balloting, but for the Board of Governors to state that it stood ready, as part of the 1980 Regular Election process, to increase the number to be elected to 16 if that increase were necessary to preserve the present balance and composition of the Executive Board. Article XII, Section 3(b) provides in part that "[f]or the purpose of each regular election of Executive Directors the Board of Governors, by an eighty-five percent majority of the total voting power may increase or decrease the number of Executive Directors" to be elected. This increase or decrease must be for the purpose of the regular biennial election and cannot be a special election, as was possible before the Second Amendment when the number of seats could be increased if new members had entered the Fund. While the Articles thus limit the election of Executive Directors to the regular biennial elections, if an increase or decrease were decided within the framework of the procedures adopted for the regular election, such an arrangement would meet the requirements of the Articles. A provision for a further increase in the number of elective Directors to be accomplished before the effective date of the election, set for November 1, 1980, would, therefore, not be inconsistent with the requirement that increases or decreases be made "for the purpose of each regular election."

Under this procedure the Board of Governors would consider the results of the election and, if it were felt to be desirable to accomplish the objectives quoted earlier, adopt a supplemental rule that would provide for the election of a sixteenth Executive Director by those Governors whose votes had not counted towards the election of one of the 15 Executive Directors already elected. This action by the Board of Governors and the further ballot could be taken during the Annual Meeting or immediately afterwards, but it would have to be completed in advance of November 1, 1980, the effective date of the election. As there would be little time for arrangements to be made for a vote without meeting and for the election to be held, for all practical purposes the arrangements and the ballot would have to be completed during the Annual Meeting.

10. The question of a timetable for possible action by the Executive Board and the Board of Governors on the supplemental regulations for the election is affected by several uncertainties. The time by which the Executive Board may make recommendations on supplemental regulations to the Board of Governors and for the Board of Governors to act on these recommendations may rest, in part, at least for some members, on whether the Board of Governors has adopted, or is in the process of adopting, any recommendation with respect to the quota for China. In addition, there is the further uncertainty, even if the Board of Governors were to act, of whether a recommended quota would become effective before the election. It will be recalled that a quota increase cannot become effective until the member has both consented to the increase and paid the additional subscription in full. This area of uncertainty, however, seems quite limited in view of China's strong interest in making final arrangements as soon as possible.

11. If the Executive Board were to agree to recommend an increase in China's quota by, say, August 8, 1980, it would be possible for that recommendation to be submitted to the Board of Governors at that time for a vote without meeting. The final day for that vote could be, say, September 8, 1980. If there is a consensus on the increase in China's quota, the Executive Board may find that it could safely make recommendations for the supplemental regulations for the 1980 Regular Election on the expectation that the increase would be in effect by the time of the Regular Election. However, in view of the 85 percent majority required for the adoption of the Resolution, the Executive Board might wish to recommend that the supplemental regulations provide that the number of elective Directors would be 16 if China's quota increase was in effect, but that it would be only 15 if it was not. Whatever recommendation is decided on, it could be submitted to the Board of Governors for adoption by a vote without meeting at the same time as the recommendation on the quota increase.

12. If there was a desire on the part of Executive Directors to know with more certainty the circumstances in effect at the time of the balloting, and in particular, whether China's quota had become effective, they could withhold their recommendation on the election regulations pending the outcome of the vote on the quota increase, although there would not then be time for the supplemental regulations to be adopted before the Annual Meeting. In that circumstance, the supplemental regulations could be submitted to the Board of Governors, through the Joint Procedures Committee, during the first day of the Annual Meeting. In any event, and regardless of whether supplemental regulations had already been proposed for adoption, if there were developments prior to the Annual Meeting, the Executive Board, or any Governor, could recommend revisions in the supplemental regulations up to the time of a meeting of the Joint Procedures Committee to consider the supplemental regulations or amendments thereto, for submission to the Board of Governors.

Attached is a list of dates indicating target dates for possible action.

Prospective Timetable

July 31	:	Meeting of Election Rules Committee [Adoption of Report to Executive Board]
August 5	:	Meeting of Executive Board
August 8	:	Last day before informal recess [Recommendation of Executive Board to Board of Governors on China's quota for a vote without meeting] [Report of Executive Board to Board of Governors for vote without meeting on Regulations for the 1980 Regular Election]
September 8	:	[Close of vote on China quota and Regulations for 1980 Regular Election]
September 12	:	Last day for Executive Board meeting before Annual Meeting (Tentative Schedule)
Week of September 15	:	Start of regional meetings
September 28-29	:	Interim Committee & Development Committee meetings
September 29 (Monday)	:	[Possible meeting of Joint Procedures Committee on Regulations for the 1980 Regular Election]
September 30 (Tues.)	:	Opening of Annual Meeting [Adoption of Regulations for Election]
September 30-October 1 (Tues., Wed.)	:	Nominations
October 1 (Wed.)	:	Balloting