THE COMPANIES ACT 1985

Friends of Bude Sea Pool

Private company limited by guarantee number 07630060

Date of incorporation 11th May 2011

SPECIAL RESOLUTION

ADOPTION OF NEW ARTICLES OF ASSOCIATION

At a general meeting of the members of the above named company, duly convened and held at the company's registered office at Bude TIC, The Crescent, Bude, Cornwall, EX23 8LE on Sunday July 17th 2011

The following Special Resolutions were duly passed

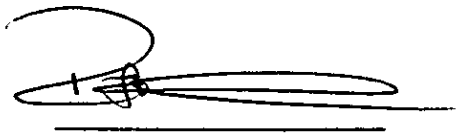
1) That the existing articles of association in their entirety be removed and substituted for the new articles of association attached to this resolution

2) That the objects as set out in the attached document be approved and adopted as the new objects of the company in place of all existing objects

There being no other business, the meeting was closed.

DATED: Sunday 17th July 2011

SIGNED·



Rowena Fern Hoseason
Director, Friends of Bude Sea Pool

THURSDAY

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COMPANIES HOUSE

Notes

These explanatory notes are for advice and reference only and in no way form part of the text of the Articles of Association

Details about the requirements of the Companies Act 2006 are available from Companies House www.companieshouse.gov.uk and our website www.charity-commission.gov.uk

Insert company name

Article 1 - Insert company name. In general, the Commission can accept any name but has the power to direct registered charity names to be changed in the circumstances set out in section 6(2) of the Charities Act 1993, which are explained in our publication *Registering as a Charity* (CC21) and in our Operational Guidance (OG18 - *Names of charities*) available on our website. In very broad terms, the name should not be offensive, or identical to (or too like) the name of any other charity, or likely to mislead the public about its purposes, activities, status, or connections

Article 2 - The articles include reference to a company secretary. Having a company secretary is no longer a legal requirement. Accordingly, the references to the company secretary are such that the charity can operate without one if it wishes to do so. Apart from the definition of "secretary" and "officers" in this interpretation article, there are also references to the secretary in articles, 38(3) and article 47

COMPANY NOT HAVING A SHARE CAPITAL

Articles of Association for a Charitable Company

Articles of Association of

FRIENDS OF BUDE SEA POOL

1 **The company's name is**

FRIENDS OF BUDE SEA POOL

(and in this document it is called the "charity")

Interpretation

2 In the articles

"address" means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the charity,

"the articles" means the charity's articles of association,

"the charity" means the company intended to be regulated by the articles,

"clear days" in relation to the period of a notice means a period excluding

- the day when the notice is given or deemed to be given, and
- the day for which it is given or on which it is to take effect,

"the Commission" means the Charity Commission for England and Wales,

"Companies Acts" means the Companies Acts (as defined in section 2 of the Companies Act 2006) insofar as they apply to the charity,

"the directors" means the directors of the charity The directors are charity trustees as defined by section 97 of the Charities Act 1993,

"document" includes, unless otherwise specified, any document sent or supplied in electronic form,

"electronic form" has the meaning given in section 1168 of the Companies Act 2006,

"the memorandum" means the charity's memorandum of association,

"officers" includes the directors and the secretary (if any);

"the seal" means the common seal of the charity if it has one,

"secretary" means any person appointed to perform the duties of the secretary of the charity,

"the United Kingdom" means Great Britain and Northern Ireland, and

words importing one gender shall include all genders, and the singular includes the plural and vice versa

Unless the context otherwise requires words or expressions contained in the articles have the same meaning as in the Companies Acts but excluding any statutory modification not in force when this constitution becomes binding on the charity

Apart from the exception mentioned in the previous paragraph a reference to an Act of Parliament includes any statutory modification or re-enactment of it for the time being in force

Liability of members

3 The liability of the members is limited to a sum not exceeding £10, being the amount that each member undertakes to contribute to the assets of the charity in the event of its being wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for

(1) payment of the charity's debts and liabilities incurred before he, she or it ceases to be a member,

(2) payment of the costs, charges and expenses of winding up, and

(3) adjustment of the rights of the contributories among themselves

Notes

Article 4 - The articles of a non-charitable company are not required to have objects However, a charitable company's articles must specifically restrict the company to only furthering a charitable object

Insert the purpose for which the company has been formed A charity's objects must be expressed in exclusively charitable terms Guidance is available in our publication *Choosing and Preparing a Governing Document* (CC22) The key elements to include are

the purpose itself (eg establishing and running a school),

the people who can benefit, and if appropriate

any geographic limits which may be needed to define the area of benefit This will not always be necessary If you do include an area of benefit, it is common to define it by reference to a local government area this has the advantage of clarity and simplicity, but can create problems if the area is subsequently altered or abolished

Article 5 - It is useful to include these powers to avoid any misunderstanding of the nature of the key powers available to the charity and the conditions that have to be met when exercising the powers Examples of powers that companies already have include a power to insure and a power to amend the articles of association note however that this power of amendment may in certain circumstances only be exercised with our prior consent under s 64 of the Charities Act 1993 (see our Operational Guidance (OG47) *Alterations to governing documents charitable companies* on our website)

Article 5(1) -This provides a general power to raise funds through a wide variety of methods including inviting and receiving donations and legacies The only restriction here is that it does not allow the charity to engage in taxable permanent trading for the purpose of raising funds (Trading on a small scale is allowed HM Revenue and Customs provides guidance on the tax treatment of different sorts of trading) If your charity is likely to raise funds from trading, our publication *Trustees, trading and tax* (CC35) provides detailed advice The terms of this power do not prevent trading in order to carry out the charity's objects - for example, an educational charity can charge fees for the educational services it provides

Objects

4 The charity's objects ("Objects") are specifically restricted to the following

TO PROMOTE FOR THE BENEFIT OF THE PUBLIC THE PROVISION OF FACILITIES FOR RECREATION OR OTHER LEISURE TIME OCCUPATION FOR THE PUBLIC AT LARGE IN THE INTERESTS OF SOCIAL WELFARE AND WITH THE OBJECT OF IMPROVING THEIR CONDITIONS OF LIFE.

Powers

5 The charity has power to do anything which is calculated to further its Object(s) or is conducive or incidental to doing so In particular, the charity has power

(1) to raise funds In doing so, the charity must not undertake any taxable permanent trading activity and must comply with any relevant statutory regulations;

(2) to buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use,

(3) to sell, lease or otherwise dispose of all or any part of the property belonging to the charity In exercising this power, the charity must comply as appropriate with sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006,

(4) to borrow money and to charge the whole or any part of the property belonging to the charity as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation The charity must comply as appropriate with sections 38 and 39 of the Charities Act 1993, as amended by the Charities Act 2006, if it wishes to mortgage land,

(5) to co-operate with other charities, voluntary bodies and statutory authorities and to exchange information and advice with them,

Notes

Article 5(2) - This power is helpful if the charity is to acquire property either for use as office premises or functionally (such as a playground or school site) Our publication *Acquiring Land* (CC33) contains further guidance on the issue

Article 5(3) - This power enables the charity to dispose of its property Sections 36 and 37 of the Charities Act 1993, as amended by the Charities Act 2006, apply to most charities and require compliance with certain conditions to ensure that charity property is disposed of for the best terms reasonably obtainable Our publication *Sales, leases, transfers or mortgages What trustees need to know about disposing of charity land* (CC28) provides more information about this

Article 5(4) - This provides the company with an explicit power to borrow It also makes clear that if this power involves securing the loan on land of the charity, it must comply with the requirements of the Charities Act 1993, as amended by the Charities Act 2006 Briefly, the directors are required to take advice and provide certain certificates/statements when they are borrowing money by way of mortgage Our Operational Guidance OG22 (*Borrowing and mortgages*) on our website provides detailed information on this

Article 5(9) - This power cannot be used to employ directors as staff See article 6

Article 5(10) - The Trustee Act 2000 provides wide powers of investment and requires the charity to take advice and to consider the need to invest in a range of different investments Our publication *Investment of Charitable Funds Basic Principles* (CC14) provides more information about charity investments We strongly recommend that the directors record any investment policy in writing, they are legally required to do so if they delegate their investment function to an investment manager The powers to employ agents, nominees and custodians are of particular use where the charity wishes to use an investment manager

Article 6 is concerned with directors' benefits and remuneration Within this article are two options Option 1 prohibits directors from deriving any financial benefit from the charity Option 2 permits no more than a minority of the directors to be paid in certain instances (such as the supply of goods and/or services), subject to the stated controls The option also allows other types of trustee benefit, subject to the Commission's prior consent Our guidance *Trustee expenses and payments* (CC11) provides more information about trustee benefits

(6) to establish or support any charitable trusts, associations or institutions formed for any of the charitable purposes included in the Objects,

(7) to acquire, merge with or to enter into any partnership or joint venture arrangement with any other charity,

(8) to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves,

(9) to employ and remunerate such staff as are necessary for carrying out the work of the charity. The charity may employ or remunerate a director only to the extent it is permitted to do so by article 6 and provided it complies with the conditions in that article,

(10) to

(a) deposit or invest funds,

(b) employ a professional fund-manager, and

(c) arrange for the investments or other property of the charity to be held in the name of a nominee,

in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000,

(11) to provide indemnity insurance for the directors in accordance with, and subject to the conditions in, section 73F of the Charities Act 1993,

(12) to pay out of the funds of the charity the costs of forming and registering the charity both as a company and as a charity,

Application of income and property

Universal clauses

6 (1) The income and property of the charity shall be applied solely towards the promotion of the Objects

(2) (a) A director is entitled to be reimbursed from the property of the charity or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the charity

(b) A director may benefit from trustee indemnity insurance cover purchased at the charity's expense in accordance with, and subject to the conditions in, section 73F of the Charities Act 1993

(c) A director may receive an indemnity from the charity in the circumstances specified in article 56

Notes

Article 6(1) - The income and property of a charity must be applied solely to further its objects and not to benefit the members or directors (except to the extent permitted) The directors have a duty to ensure that the funds are correctly applied in accordance with this principle

Article 6(2)(b) – If Option 1 of article 6(4) is used then this benefit may still be provided as Option 1 does not expressly prohibit the purchase of trustee indemnity insurance cover purchased at the charity's expense

Article 6(4) - A charity director may not derive any financial benefit from his or her office unless specifically authorised to do so by the Court, the Charity Commission or the express terms of the governing document of the charity This prohibition extends to people closely connected to the director - see article 6(5)(b)

Use Option 1 and delete Option 2 [sub-clauses 4(A)-4(C)] if the charity will want to prohibit the directors from receiving any payment from the charity other than for the type of expenses permitted at article (6)(2)

Use Option 2 [sub-clauses 4(A)-4(C)] and delete Option 1 [sub-clause 4(A)] if the charity will want to permit less than a majority of the directors to receive

payment for goods and services supplied to the charity under the statutory power, and/or

payment for the supply of goods only, subject to the controls of sub-clause (4)(C), and/or

any further financial benefit previously authorised by the Charity Commission - our publication *Trustee expenses and payments* (CC11) advises on the considerations when seeking the Commission's authority in these circumstances

Option 2 additionally permits directors to enter into the sorts of transactions covered in 6(4)(B) if it is thought that it will be in the best interests of the charity

The extent of the Option 2 sub-clauses used will depend on the charity's requirements Use of any sub-clause permitting a payment should only be on the basis that it is expedient and in the charity's best interests If sub-clause (4)(B)(a)(iii) is used then so must sub-clause 4(C)

(3) None of the income or property of the charity may be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to any member of the charity This does not prevent a member who is not also a director receiving

(a) a benefit from the charity in the capacity of a beneficiary of the charity,

(b) reasonable and proper remuneration for any goods or services supplied to the charity

Directors' benefits – Options

[Option 1 – Prohibition of directors'/connected persons' benefits

(4)(A) No director or connected person may buy goods or services from the charity on terms preferential to those applicable to other members of the public, or sell goods or services to the charity or receive remuneration, or receive any other financial benefit from the charity] In this article a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value]

[Option 2 -Provision of goods and services, employment/other remuneration/financial benefits – directors/connected persons

(4)(A) No director or connected person may

(a) buy any goods or services from the charity on terms preferential to those applicable to members of the public,

(b) sell goods, services, or any interest in land to the charity,

(c) be employed by, or receive any remuneration from, the charity,

(d) receive any other financial benefit from the charity, unless

(i) the payment is permitted by article 6(4)(B)(a), or

(ii) the directors obtain the prior written approval of the Commission and fully comply with any procedures it prescribes

In this article a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value

Option 2 continued – Scope and powers permitting directors'/connected persons' benefits

(4)(B) (a) (i) A director or connected person may receive a benefit from the charity in the capacity of a beneficiary of the charity provided that a majority of the directors do not benefit in this way

Notes

Directors are under a specific duty to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company (section 175(1) of the Companies Act 2006)

In the case of a charitable company this duty can be modified as regards a conflict of interests arising in relation to a transaction or arrangement with the company if it is permitted by the company's articles of association (section 175(3) of the Companies Act 2006)

Where a benefit is authorised by an order of the Court or of the Charity Commission, the duty to avoid a conflict of interests does not arise (section 26(5A) of the Charities Act 1993)

In addition, authorisation may be given by the unconflicted directors to a conflict of interests where the company's constitution includes a provision enabling them to provide such authorisation (section 175(5) of the Companies Act 2006)

Article 6(4)(A) in Option 2 provides the necessary structure for all the benefits either to be specifically authorised by the articles within the terms of section 175(3) of the Companies Act 2006 (as modified by section 181 for charitable companies) or to be authorised by the Commission so that the duty in section 175(1) of the Companies Act 2006 does not apply In addition, because of the specific duty of section 175 of the Companies Act 2006, some provision has been made for conflicts of duties where a director owes a duty of loyalty to another organisation but the unconflicted directors consider it is in the best interests of the charity for that director to continue as a director This provision can be found at article 45

Note that article 44 imposes a duty on the directors to declare an interest in any transaction of the charity and to absent themselves from any discussion where there may be a conflict between their personal interests and those of the charity This would include, for example, discussions about the need for the provision of a particular service which one of the directors might have an interest in supplying (although in this example the terms of section 73A of the Charities Act 1993 would already make it necessary for the director to absent him/herself) Statutory duties to declare any interests came into force on 1 October 2008 (sections 177 and 182 of the Companies Act 2006)

(ii) A director or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the charity where that is permitted in accordance with, and subject to the conditions in, section 73A to 73C of the Charities Act 1993

(iii) Subject to article 6(4)(C) a director or connected person may provide the charity with goods that are not supplied in connection with services provided to the charity by the director or connected person

(iv) A director or connected person may receive interest on money lent to the charity at a reasonable and proper rate which must be 2% (or more) per annum below the base rate of a clearing bank to be selected by the directors

(v) A director or connected person may receive rent for premises let by the director or connected person to the charity if the amount of the rent and the other terms of the lease are reasonable and proper and provided that the director concerned shall withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion

(vi) The directors may arrange for the purchase, out of the funds of the charity, of insurance designed to indemnify the directors in accordance with the terms of, and subject to the conditions in, section 73F of the Charities Act 1993

(vii) A director or connected person may take part in the normal trading and fundraising activities of the charity on the same terms as members of the public

Payment for supply of goods only – controls

(4)(C) The charity and its directors may only rely upon the authority provided by article 6(4)(B)(a)(iii) if each of the following conditions is satisfied

(a) The amount or maximum amount of the payment for the goods is set out in an agreement in writing between

(i) the charity or its directors (as the case may be), and

(ii) the director or connected person supplying the goods ("the supplier") under which the supplier is to supply the goods in question to or on behalf of the charity

(b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question

Notes

Article 6(4)(A)(a) Option 2 - This does not prevent a director from buying or leasing land from the charity such transactions will however require the Commission's consent under section 36 of the Charities Act 1993 Any financial benefit authorised by this article must be within the stated definition

Article 6(4)(A)(d) Option 2 - Our publication *Trustee expenses and payments* (CC11) explains the circumstances in which we will authorise a payment to a director

Article 6(4)(B)(a) Option 2 - This sets out possible powers to permit a range of different benefits for directors if Option 2 is used and it is going to be in the interests of the charity to include these

Article 6(4)(B)(a)(i) - Charities benefiting all local inhabitants in specific geographical areas (eg community associations) may wish to substitute the following 'A director or connected person may receive a benefit from the charity as a beneficiary provided it is available generally to the beneficiaries of the charity'

Article 6(4)(B)(a)(iv) – The effect of this clause is that no interest can be paid to a director unless the chosen base rate is more than 2%

These powers cannot be adopted by existing charities without the authority of the Charity Commission None of these options permits the directors to receive payment for acting as director

(c) The other directors are satisfied that it is in the best interests of the charity to contract with the supplier rather than with someone who is not a director or connected person In reaching that decision the directors must balance the advantage of contracting with a director or connected person against the disadvantages of doing so

(d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the charity

(e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of directors is present at the meeting

(f) The reason for their decision is recorded by the directors in the minute book

(g) A majority of the directors then in office are not in receipt of remuneration or payments authorised by article 6(4)(A)]

(5) (a) In sub-clauses (2)-(4) of this article 6 "charity" shall include any company in which the charity

- holds more than 50% of the shares, or
- controls more than 50% of the voting rights attached to the shares, or
- has the right to appoint one or more directors to the board of the company,

(b) In sub-clause (4) of this article 6, sub-clause (2) of article 45 and sub-clause (2) of article 46 "connected person" means

(i) a child, parent, grandchild, grandparent, brother or sister of the director,

(ii) the spouse or civil partner of the director or of any person falling within paragraph (i) above,

(iii) a person carrying on business in partnership with the director or with any person falling within paragraph (i) or (ii) above,

(iv) an institution which is controlled –

(I) by the director or any connected person falling within paragraph (i), (ii), or (iii) above, or

(II) by two or more persons falling within sub-paragraph (I), when taken together

(v) a body corporate in which –

(I) the director or any connected person falling within paragraphs (i) to (iii) has a substantial interest, or

(II) two or more persons falling within sub-paragraph (I) who, when taken together, have a substantial interest

(c) Paragraphs 2 to 4 of Schedule 5 to the Charities Act 1993 apply for the purposes of interpreting the terms used in this sub-clause

Members

7 (1) The subscribers to the memorandum are the first members of the charity

(2) Membership is open to other individuals or organisations who

(a) apply to the charity in the form required by the directors, and

(b) are approved by the directors

(3) (a) The directors may only refuse an application for membership if, acting reasonably and properly, they consider it to be in the best interests of the charity to refuse the application

(b) The directors must inform the applicant in writing of the reasons for the refusal within twenty-one days of the decision

(c) The directors must consider any written representations the applicant may make about the decision The directors' decision following any written representations must be notified to the applicant in writing but shall be final

(4) Membership is not transferable

(5) The directors must keep a register of names and addresses of the members

Article 7(5) - It is very important for the good administration of the charity to keep the register of members up to date failure to do so can result in a number of problems, including serious difficulties with the calling of annual or general meetings It should also be remembered that section 116 of the Companies Act 2006 sets out certain requirements for making the register available to members of the charity and to the public

Classes of membership

8 (1) The directors may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members

(2) The directors may not directly or indirectly alter the rights or obligations attached to a class of membership

(3) The rights attached to a class of membership may only be varied if

(a) three-quarters of the members of that class consent in writing to the variation, or

(b) a special resolution is passed at a separate general meeting of the members of that class agreeing to the variation

(4) The provisions in the articles about general meetings shall apply to any meeting relating to the variation of the rights of any class of members

Termination of membership

9 Membership is terminated if.

(1) the member dies or, if it is an organisation, ceases to exist,

(2) the member resigns by written notice to the charity unless, after the resignation, there would be less than two members,

(3) any sum due from the member to the charity is not paid in full within six months of it falling due,

(4) the member is removed from membership by a resolution of the directors that it is in the best interests of the charity that his or her or its membership is terminated A resolution to remove a member from membership may only be passed if

(a) the member has been given at least twenty-one days' notice in writing of the meeting of the directors at which the resolution will be proposed and the reasons why it is to be proposed,

(b) the member or, at the option of the member, the member's representative (who need not be a member of the charity) has been allowed to make representations to the meeting.

General meetings

10 (1) The charity must hold its first annual general meeting within eighteen months after the date of its incorporation

(2) An annual general meeting must be held in each subsequent year and not more than fifteen months may elapse between successive annual general meetings

11 The directors may call a general meeting at any time

Article 10 - We provide guidance on meetings in our booklet *Charities and Meetings* (CC48), produced in association with The Institute of Chartered Secretaries and Administrators (ICSA) This article makes provision for an annual general meeting However, an annual general meeting is not a legal requirement and this article can be amended where this is appropriate If no provision is to be made for an annual general meeting, consequential amendments will be required to articles 12(1)(a), 12(3), 29, 30(2) and 34(2)

Notes

Article 12 - This article provides for 21 days' notice for an annual general meeting or a general meeting called for the passing of a special resolution The only legal requirement in respect of notice for general meetings of a private company specifies notice of at least 14 days Accordingly, this figure can be substituted if considered appropriate

Notice of a general meeting is required to include a statement setting out the rights of members to appoint a proxy (section 325 of the Companies Act 2006)

Article 14(2) - Insert the figure for the quorum This should be set with care If it is too high, any absences may make it difficult to have a valid meeting If it is too low, a small minority may be able to impose its views unreasonably Note that article 15 sets out the procedure for dealing with situations where the meeting is inquorate

Notice of general meetings

12 (1) The minimum periods of notice required to hold a general meeting of the charity are

(a) twenty-one clear days for an annual general meeting or a general meeting called for the passing of a special resolution,

(b) fourteen clear days for all other general meetings

(2) A general meeting may be called by shorter notice if it is so agreed by a majority in number of members having a right to attend and vote at the meeting, being a majority who together hold not less than 90 percent of the total voting rights

(3) The notice must specify the date time and place of the meeting and the general nature of the business to be transacted If the meeting is to be an annual general meeting, the notice must say so The notice must also contain a statement setting out the right of members to appoint a proxy under section 324 of the Companies Act 2006 and article 19

(4) The notice must be given to all the members and to the directors and auditors.

13 The proceedings at a meeting shall not be invalidated because a person who was entitled to receive notice of the meeting did not receive it because of an accidental omission by the charity

Proceedings at general meetings

14 (1) No business shall be transacted at any general meeting unless a quorum is present

(2) A quorum is TEN (10)

(a) [ ] members present in person or by proxy and entitled to vote upon the business to be conducted at the meeting, or

(b) one tenth of the total membership at the time

whichever is the greater

(3) The authorised representative of a member organisation shall be counted in the quorum

15 (1) If:

(a) a quorum is not present within half an hour from the time appointed for the meeting, or

(b) during a meeting a quorum ceases to be present,

the meeting shall be adjourned to such time and place as the directors shall determine

(2) The directors must reconvene the meeting and must give at least seven clear days' notice of the reconvened meeting stating the date, time and place of the meeting

Article 15(3) - Note that this provision permits the rescheduled meeting to proceed without a quorum being present within 15 minutes of the specified start time It also means that the number of members present in person or by proxy 15 minutes after the scheduled start of the meeting will form the quorum if the quorum required at article 14(2) is not achieved

(3) If no quorum is present at the reconvened meeting within fifteen minutes of the time specified for the start of the meeting the members present in person or by proxy at that time shall constitute the quorum for that meeting

16 (1) General meetings shall be chaired by the person who has been appointed to chair meetings of the directors

(2) If there is no such person or he or she is not present within fifteen minutes of the time appointed for the meeting a director nominated by the directors shall chair the meeting

(3) If there is only one director present and willing to act, he or she shall chair the meeting

(4) If no director is present and willing to chair the meeting within fifteen minutes after the time appointed for holding it, the members present in person or by proxy and entitled to vote must choose one of their number to chair the meeting

Article 17 - This is a discretionary power for the members present in person or by proxy to adjourn a quorate meeting This differs from the adjournment provisions in article 15 which are not discretionary and must be used where a general meeting is not quorate

17 (1) The members present in person or by proxy at a meeting may resolve by ordinary resolution that the meeting shall be adjourned

(2) The person who is chairing the meeting must decide the date, time and place at which the meeting is to be reconvened unless those details are specified in the resolution

(3) No business shall be conducted at a reconvened meeting unless it could properly have been conducted at the meeting had the adjournment not taken place

(4) If a meeting is adjourned by a resolution of the members for more than seven days, at least seven clear days' notice shall be given of the reconvened meeting stating the date, time and place of the meeting

Article 18 - This sets out how votes may be taken A poll is a formal count of votes on a resolution It can be useful where a show of hands is inconclusive it is also sensible where the votes of certain categories of member count for more than those of others and where there is a concern that this would not be recognised on a show of hands where the result is close

18 (1) Any vote at a meeting shall be decided by a show of hands unless before, or on the declaration of the result of, the show of hands a poll is demanded

(a) by the person chairing the meeting, or

(b) by at least two members present in person or by proxy and having the right to vote at the meeting, or

(c) by a member or members present in person or by proxy representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting.

Notes

(2) (a) The declaration by the person who is chairing the meeting of the result of a vote shall be conclusive unless a poll is demanded

(b) The result of the vote must be recorded in the minutes of the charity but the number or proportion of votes cast need not be recorded

(3) (a) A demand for a poll may be withdrawn, before the poll is taken, but only with the consent of the person who is chairing the meeting

(b) If the demand for a poll is withdrawn the demand shall not invalidate the result of a show of hands declared before the demand was made

(4) (a) A poll must be taken as the person who is chairing the meeting directs, who may appoint scrutineers (who need not be members) and who may fix a time and place for declaring the results of the poll

(b) The result of the poll shall be deemed to be the resolution of the meeting at which the poll is demanded.

(5) (a) A poll demanded on the election of a person to chair a meeting or on a question of adjournment must be taken immediately

(b) A poll demanded on any other question must be taken either immediately or at such time and place as the person who is chairing the meeting directs

Article 18(5)(c) - Where it is decided that a poll is to take place in these circumstances after a general meeting, all the members of the charity are entitled to vote

(c) The poll must be taken within thirty days after it has been demanded

(d) If the poll is not taken immediately at least seven clear days' notice shall be given specifying the time and place at which the poll is to be taken

(e) If a poll is demanded the meeting may continue to deal with any other business that may be conducted at the meeting

Content of proxy notices

19 (1) Proxies may only validly be appointed by a notice in writing (a "proxy notice") which -

(a) states the name and address of the member appointing the proxy,

(b) identifies the person appointed to be that member's proxy and the general meeting in relation to which that person is appointed,

(c) is signed by or on behalf of the member appointing the proxy, or is authenticated in such manner as the directors may determine, and

(d) is delivered to the charity in accordance with the articles and any instructions contained in the notice of the general meeting to which they relate

(2) The charity may require proxy notices to be delivered in a particular form, and may specify different forms for different purposes

(3) Proxy notices may specify how the proxy appointed under them is to vote (or that the proxy is to abstain from voting) on one or more resolutions

(4) Unless a proxy notice indicates otherwise, it must be treated as -

(a) allowing the person appointed under it as a proxy discretion as to how to vote on any ancillary or procedural resolutions put to the meeting, and

(b) appointing that person as a proxy in relation to any adjournment of the general meeting to which it relates as well as the meeting itself

Article 19 - This makes provision for proxy voting Members of a company have a legal right to appoint proxies under section 324 of the Companies Act 2006 A statement about this right must be contained in a notice calling a meeting of the company (section 325 of the Companies Act 2006) Article 12 deals with such notices

The provision for proxies is based on the provisions in Schedule 2 of the Companies (Model Articles) Regulations 2008

Delivery of proxy notices

19A (1) A person who is entitled to attend, speak or vote (either on a show of hands or on a poll) at a general meeting remains so entitled in respect of that meeting or any adjournment of it, even though a valid proxy notice has been delivered to the charity by or on behalf of that person

(2) An appointment under a proxy notice may be revoked by delivering to the charity a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given

(3) A notice revoking a proxy appointment only takes effect if it is delivered before the start of the meeting or adjourned meeting to which it relates

(4) If a proxy notice is not executed by the person appointing the proxy, it must be accompanied by written evidence of the authority of the person who executed it to execute it on the appointor's behalf

Article 20 - This complies with the Companies Act 2006 which provides that if certain requirements are met members may agree written ordinary and special resolutions (sections 288 - 298) What constitutes an authenticated document is explained in section 1146 of the Companies Act 2006 A document sent in hard form is

Written resolutions

20 (1) A resolution in writing agreed by a simple majority (or in the case of a special resolution by a majority of not less than 75%) of the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective provided that

Notes

sufficiently authenticated by a signature of the person sending or supplying it A document sent in electronic form is sufficiently authenticated (a) if the identity of the sender is confirmed in a manner specified by the company, or (b) where no such manner has been specified, if the communication contains or is accompanied by a statement of the identity of the sender and the company has no reason to doubt the truth of that statement

(a) a copy of the proposed resolution has been sent to every eligible member,

(b) a simple majority (or in the case of a special resolution a majority of not less than 75%) of members has signified its agreement to the resolution; and

(c) it is contained in an authenticated document which has been received at the registered office within the period of 28 days beginning with the circulation date

(2) A resolution in writing may comprise several copies to which one or more members have signified their agreement

(3) In the case of a member that is an organisation, its authorised representative may signify its agreement

Votes of members

21 Subject to article 8, every member, whether an individual or an organisation, shall have one vote

22 Any objection to the qualification of any voter must be raised at the meeting at which the vote is tendered and the decision of the person who is chairing the meeting shall be final

23 (1) Any organisation that is a member of the charity may nominate any person to act as its representative at any meeting of the charity

(2) The organisation must give written notice to the charity of the name of its representative The representative shall not be entitled to represent the organisation at any meeting unless the notice has been received by the charity The representative may continue to represent the organisation until written notice to the contrary is received by the charity

(3) Any notice given to the charity will be conclusive evidence that the representative is entitled to represent the organisation or that his or her authority has been revoked The charity shall not be required to consider whether the representative has been properly appointed by the organisation

Directors

Article 24(1) - By 'natural person' we mean a human being rather than a company which can in some circumstances be regarded as a 'person' The minimum age for a director in this article is 16 years A statutory provision to this effect came into force on 1 October 2008

24 (1) A director must be a natural person aged 16 years or older

(2) No one may be appointed a director if he or she would be disqualified from acting under the provisions of article 36

25 The number of directors shall be not less than three but (unless otherwise determined by ordinary resolution) shall not be subject to any maximum

26 The first directors shall be those persons notified to Companies House as the first directors of the charity

27 A director may not appoint an alternate director or anyone to act on his or her behalf at meetings of the directors.

Powers of directors

28 (1) The directors shall manage the business of the charity and may exercise all the powers of the charity unless they are subject to any restrictions imposed by the Companies Acts, the articles or any special resolution

(2) No alteration of the articles or any special resolution shall have retrospective effect to invalidate any prior act of the directors

(3) Any meeting of directors at which a quorum is present at the time the relevant decision is made may exercise all the powers exercisable by the directors

Retirement of directors

29 At the first annual general meeting all the directors must retire from office unless by the close of the meeting the members have failed to elect sufficient directors to hold a quorate meeting of the directors At each subsequent annual general meeting one-third of the directors or, if their number is not three or a multiple of three, the number nearest to one-third, must retire from office If there is only one director he or she must retire

30 (1) The directors to retire by rotation shall be those who have been longest in office since their last appointment If any directors became or were appointed directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot

(2) If a director is required to retire at an annual general meeting by a provision of the articles the retirement shall take effect upon the conclusion of the meeting

Appointment of directors

31 The charity may by ordinary resolution

(1) appoint a person who is willing to act to be a director, and

(2) determine the rotation in which any additional directors are to retire

32 No person other than a director retiring by rotation may be appointed a director at any general meeting unless

(1) he or she is recommended for re-election by the directors, or

(2) not less than fourteen nor more than thirty-five clear days before the date of the meeting, the charity is given a notice that·

Article 32 - Our publication *Finding New Trustees What charities need to know* (CC30) provides guidance on effective methods of recruiting new charity trustees or directors and of familiarising them with the charity

Article 32(2)(c) - Certain details of newly appointed directors must be sent to Companies House on Form AP01 This includes details of current and any former name, address, occupation and consent to act

(a) is signed by a member entitled to vote at the meeting,

(b) states the member's intention to propose the appointment of a person as a director,

(c) contains the details that, if the person were to be appointed, the charity would have to file at Companies House, and

(d) is signed by the person who is to be proposed to show his or her willingness to be appointed

33 All members who are entitled to receive notice of a general meeting must be given not less than seven nor more than twenty-eight clear days' notice of any resolution to be put to the meeting to appoint a director other than a director who is to retire by rotation

34 (1) The directors may appoint a person who is willing to act to be a director

(2) A director appointed by a resolution of the other directors must retire at the next annual general meeting and must not be taken into account in determining the directors who are to retire by rotation

35 The appointment of a director, whether by the charity in general meeting or by the other directors, must not cause the number of directors to exceed any number fixed as the maximum number of directors

Disqualification and removal of directors

36 A director shall cease to hold office if he or she

(1) ceases to be a director by virtue of any provision in the Companies Acts or is prohibited by law from being a director,

Article 36(2) - Our publication *Finding New Trustees What charities need to know* (CC30) explains what section 72 of this Act covers In very broad terms, someone who has been convicted of offences involving deception or fraud, or who is an undischarged bankrupt or who has been removed from office as a charity trustee by us, will be disqualified from acting as a director

(2) is disqualified from acting as a trustee by virtue of section 72 of the Charities Act 1993 (or any statutory re-enactment or modification of that provision),

(3) ceases to be a member of the charity,

(4) becomes incapable by reason of mental disorder, illness or injury of managing and administering his or her own affairs,

(5) resigns as a director by notice to the charity (but only if at least two directors will remain in office when the notice of resignation is to take effect), or

(6) is absent without the permission of the directors from all their meetings held within a period of six consecutive months and the directors resolve that his or her office be vacated

Article 38 - We provide guidance on meetings in our booklet *Charities and Meetings* (CC48) Article 38(5) is optional it is common but not obligatory for the chair to have a casting vote at directors' meetings Article 38(6) is also optional It permits directors to hold meetings by suitable electronic means where this is agreed by the directors and where each director at the meeting is able to communicate with the other persons attending the meeting If article 38(6) is adopted, the optional wider definition of 'present' in article 39(1) should also be adopted

Remuneration of directors

37 The directors must not be paid any remuneration unless it is authorised by article 6

Proceedings of directors

38 (1) The directors may regulate their proceedings as they think fit, subject to the provisions of the articles

(2) Any director may call a meeting of the directors

(3) The secretary (if any) must call a meeting of the directors if requested to do so by a director

(4) Questions arising at a meeting shall be decided by a majority of votes

[Optional

~~(5) In the case of an equality of votes, the person who is chairing the meeting shall have a second or casting vote]~~

[(6) A meeting may be held by suitable electronic means agreed by the directors in which each participant may communicate with all the other participants]

39 (1) No decision may be made by a meeting of the directors unless a quorum is present at the time the decision is purported to be made ['Present' includes being present by suitable electronic means agreed by the directors in which a participant or participants may communicate with all the other participants]

(2) The quorum shall be two or the number nearest to one-third of the total number of directors, whichever is the greater, or such larger number as may be decided from time to time by the directors

(3) A director shall not be counted in the quorum present when any decision is made about a matter upon which that director is not entitled to vote

40 If the number of directors is less than the number fixed as the quorum, the continuing directors or director may act only for the purpose of filling vacancies or of calling a general meeting

41 (1) The directors shall appoint a director to chair their meetings and may at any time revoke such appointment

(2) If no-one has been appointed to chair meetings of the directors or if the person appointed is unwilling to preside or is not present within ten minutes after the time appointed for the meeting, the directors present may appoint one of their number to chair that meeting

(3) The person appointed to chair meetings of the directors shall have no functions or powers except those conferred by the articles or delegated to him or her by the directors

42 (1) A resolution in writing or in electronic form agreed by all of the directors entitled to receive notice of a meeting of the directors and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held

(2) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more directors has signified their agreement

Delegation

43 (1) The directors may delegate any of their powers or functions to a committee of two or more directors but the terms of any delegation must be recorded in the minute book

(2) The directors may impose conditions when delegating, including the conditions that

(a) the relevant powers are to be exercised exclusively by the committee to whom they delegate,

(b) no expenditure may be incurred on behalf of the charity except in accordance with a budget previously agreed with the directors

(3) The directors may revoke or alter a delegation

(4) All acts and proceedings of any committees must be fully and promptly reported to the directors

Declaration of directors' interests

44 A director must declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the charity or in any transaction or arrangement entered into by the charity which has not previously been declared A director must absent himself or herself from any discussions of the directors in which it is possible that a conflict will arise between his or her duty to act solely in the interests of the charity and any personal interest (including but not limited to any personal financial interest)

Notes

Article 45 - This article permits unconflicted directors to authorise a conflict of interests arising from a duty of loyalty owed by a director to another organisation or person provided that there is no direct or indirect benefit of any nature received by the director in question or by a connected person Such a procedure is permitted by section 175(4) and (5) of the Companies Act 2006 (as modified for charitable companies by section 181) where provision is made for it in the articles The Commission considers that such a procedure should be limited to conflicts arising from a duty of loyalty to another organisation or person where there is no direct or indirect benefit of whatever nature to the director or to a connected person In other circumstances involving a situation leading to a conflict of interests on the part of a director, the Commission is able to authorise the director to act notwithstanding the conflict where it is satisfied that this would be expedient in the interests of the charity (section 26 of the Charities Act 1993)

Conflicts of interests

45 (1) If a conflict of interests arises for a director because of a duty of loyalty owed to another organisation or person and the conflict is not authorised by virtue of any other provision in the articles, the unconflicted directors may authorise such a conflict of interests where the following conditions apply

(a) the conflicted director is absent from the part of the meeting at which there is discussion of any arrangement or transaction affecting that other organisation or person,

(b) the conflicted director does not vote on any such matter and is not to be counted when considering whether a quorum of directors is present at the meeting, and

(c) the unconflicted directors consider it is in the interests of the charity to authorise the conflict of interests in the circumstances applying.

(2) In this article a conflict of interests arising because of a duty of loyalty owed to another organisation or person only refers to such a conflict which does not involve a direct or indirect benefit of any nature to a director or to a connected person

Validity of directors' decisions

46 (1) Subject to article 46(2), all acts done by a meeting of directors, or of a committee of directors, shall be valid notwithstanding the participation in any vote of a director

(a) who was disqualified from holding office,

(b) who had previously retired or who had been obliged by the constitution to vacate office,

(c) who was not entitled to vote on the matter, whether by reason of a conflict of interests or otherwise,

if without

(d) the vote of that director, and

(e) that director being counted in the quorum,

the decision has been made by a majority of the directors at a quorate meeting

(2) Article 46(1) does not permit a director or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the directors or of a committee of directors if, but for article 46(1), the resolution would have been void, or if the director has not complied with article 44

Seal

47 If the charity has a seal it must only be used by the authority of the directors or of a committee of directors authorised by the directors The directors may determine who shall sign any instrument to which the seal is affixed and unless otherwise so determined it shall be signed by a director and by the secretary (if any) or by a second director

Minutes

Article 48 - Using the power to make rules at article 57, the directors can decide in what format the minutes should be kept and how to validate them

48 The directors must keep minutes of all

(1) appointments of officers made by the directors,

(2) proceedings at meetings of the charity,

(3) meetings of the directors and committees of directors including

(a) the names of the directors present at the meeting,

(b) the decisions made at the meetings, and

(c) where appropriate the reasons for the decisions

Accounts

Article 49 - The Statement of Recommended Practice for charities is available on our website, or in hard copy, from the publishers CCH at £15 (plus postage and packing) per copy Their customer services number is 0870 777 2906

49 (1) The directors must prepare for each financial year accounts as required by the Companies Acts The accounts must be prepared to show a true and fair view and follow accounting standards issued or adopted by the Accounting Standards Board or its successors and adhere to the recommendations of applicable Statements of Recommended Practice

(2) The directors must keep accounting records as required by the Companies Acts

Annual Report and Return and Register of Charities

Article 50 - Guidance available on our website sets out the key accounting requirements for charities All charities with incomes over £10k must send an Annual Report and Annual Return to us within 10 months of the end of their financial year Charities with incomes over £25k must in addition send accounts

Article 50(1)(c) - The Annual Return provides a summary of key financial data

50 (1) The directors must comply with the requirements of the Charities Act 1993 with regard to the

(a) transmission of a copy of the statements of account to the Commission,

(b) preparation of an Annual Report and the transmission of a copy of it to the Commission,

(c) preparation of an Annual Return and its transmission to the Commission

(2) The directors must notify the Commission promptly of any changes to the charity's entry on the Central Register of Charities

Notes

Articles 51, 52, 53 & 55 – There are detailed requirements with regard to electronic communications contained in the Companies Act 2006 Sections 308-309 deal with the manner in which notice is to be given and the content of any notice on a website Section 333 relates to sending documents relating to meetings etc in electronic form Sections 1143-1148 and Schedules 4 and 5 deal with sending or supplying documents or information Section 1168 contains definitions of "hard copy" and "electronic form" and other relevant terms

Means of communication to be used

51 (1) Subject to the articles, anything sent or supplied by or to the charity under the articles may be sent or supplied in any way in which the Companies Act 2006 provides for documents or information which are authorised or required by any provision of that Act to be sent or supplied by or to the charity

(2) Subject to the articles, any notice or document to be sent or supplied to a director in connection with the taking of decisions by directors may also be sent or supplied by the means by which that director has asked to be sent or supplied with such notices or documents for the time being

52 Any notice to be given to or by any person pursuant to the articles

(1) must be in writing, or

(2) must be given in electronic form

53 (1) The charity may give any notice to a member either

(a) personally, or

(b) by sending it by post in a prepaid envelope addressed to the member at his or her address, or

(c) by leaving it at the address of the member, or

(d) by giving it in electronic form to the member's address

(e) by placing the notice on a website and providing the person with a notification in writing or in electronic form of the presence of the notice on the website The notification must state that it concerns a notice of a company meeting and must specify the place date and time of the meeting

(2) A member who does not register an address with the charity or who registers only a postal address that is not within the United Kingdom shall not be entitled to receive any notice from the charity

54 A member present in person at any meeting of the charity shall be deemed to have received notice of the meeting and of the purposes for which it was called

55 (1) Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given

(2) Proof that an electronic form of notice was given shall be conclusive where the company can demonstrate that it was properly addressed and sent, in accordance with section 1147 of the Companies Act 2006

Notes

Article 56 - This provision is about the extent to which the directors should be protected ('indemnified') from liability It reflects changes in the law made by the Companies Act 2006 Three options are given for indemnifying directors It may be helpful to consult your own legal advisers about which approach is best for your charity

The options here cater for the needs of most charities The main differences are to do with whether the company wishes to indemnify its directors in individual cases, or whether this protection should be a right to which they are automatically entitled Note that none of these options gives the company the power to grant a blanket indemnity to its directors – they are all limited to what is allowed by law and can only be exercised in the interests of the charity

After considering the bullet points below, choose one option and delete the others

- Option 1 gives the company the option to indemnify directors in any circumstances permitted by the Companies Act 2006 It does not confer any **right** to an indemnity This option does not explicitly cover officers other than directors, but the general law implies an ability to indemnify them
- Option 2 enables the company to provide a **right** to an indemnity for directors A **power** to indemnify other officers may be implied
- Option 3 enables the company to confer on **directors** the right to a **limited indemnity** as set out in the article

Article 56A - This article is optional but would permit the charity to indemnify an auditor in the limited circumstances permitted by section 533 of the Companies Act 2006

(3) In accordance with section 1147 of the Companies Act 2006 notice shall be deemed to be given·

(a) 48 hours after the envelope containing it was posted, or

(b) in the case of an electronic form of communication, 48 hours after it was sent

Indemnity

[Option 1

[56 (1) The charity may indemnify any director against any liability incurred by him or her or it in that capacity, to the extent permitted by sections 232 to 234 of the Companies Act 2006

(2) In this article a "relevant director" means any director or former director of the charity.]

[Option 2

[56 (1) The charity shall indemnify any director against any liability incurred by him or her or it in that capacity, to the extent permitted by sections 232 to 234 of the Companies Act 2006

(2) In this article a "relevant director" means any director or former director of the charity]

[Option 3

[56 (1) The charity shall indemnify every director against any liability incurred in successfully defending legal proceedings in that capacity, or in connection with any application in which relief is granted by the Court from liability for negligence, default, or breach of duty or breach of trust in relation to the charity

(2) In this article a "relevant director" means any director or former director of the charity]

[Optional

56A The charity may indemnify an auditor against any liability incurred by him or her or it

(1) in defending proceedings (whether civil or criminal) in which judgment is given in his or her or its favour or he or she or it is acquitted, or

(2) in connection with an application under section 1157 of the Companies Act 2006 (power of Court to grant relief in case of honest and reasonable conduct) in which relief is granted to him or her or it by the Court]

Rules

57 (1) The directors may from time to time make such reasonable and proper rules or bye laws as they may deem necessary or expedient for the proper conduct and management of the charity

(2) The bye laws may regulate the following matters but are not restricted to them.

(a) the admission of members of the charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members,

(b) the conduct of members of the charity in relation to one another, and to the charity's employees and volunteers,

(c) the setting aside of the whole or any part or parts of the charity's premises at any particular time or times or for any particular purpose or purposes,

(d) the procedure at general meetings and meetings of the directors in so far as such procedure is not regulated by the Companies Acts or by the articles,

(e) generally, all such matters as are commonly the subject matter of company rules

(3) The charity in general meeting has the power to alter, add to or repeal the rules or bye laws

(4) The directors must adopt such means as they think sufficient to bring the rules and bye laws to the notice of members of the charity

(5) The rules or bye laws shall be binding on all members of the charity No rule or bye law shall be inconsistent with, or shall affect or repeal anything contained in, the articles

Dissolution

58 (1) The members of the charity may at any time before, and in expectation of, its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision has been made for them, shall on or before the dissolution of the charity be applied or transferred in any of the following ways

(a) directly for the Objects, or

(b) by transfer to any charity or charities for purposes similar to the Objects, or

Article 58 - The charity has power under the Companies Acts to wind up The directors must comply with company law in using that power and provide Companies House with the required documentation In these circumstances, directors will need to send to us promptly a copy of the relevant resolution and a copy of the final accounts

(c) to any charity or charities for use for particular purposes that fall within the Objects

(2) Subject to any such resolution of the members of the charity, the directors of the charity may at any time before and in expectation of its dissolution resolve that any net assets of the charity after all its debts and liabilities have been paid, or provision made for them, shall on or before dissolution of the charity be applied or transferred

(a) directly for the Objects, or

(b) by transfer to any charity or charities for purposes similar to the Objects, or

(c) to any charity or charities for use for particular purposes that fall within the Objects

(3) In no circumstances shall the net assets of the charity be paid to or distributed among the members of the charity (except to a member that is itself a charity) and if no resolution in accordance with article 58(1) is passed by the members or the directors the net assets of the charity shall be applied for charitable purposes as directed by the Court or the Commission

ENDS