

## ECOLOGY BUILDING SOCIETY (the Society)

### Proposed changes to the Rules of the Society

It is proposed that, subject to the approval of the members of the Society by special resolution to be put to the Annual General Meeting on 26 April 2014, the Rules of the Society shall be amended as set out below:

#### 1 Rule 1 – Interpretation

- (a) Insert the following definition:

""Core Capital Deferred Share" means a type of Deferred Share issued after 31 December 2013 described in its terms and conditions as a core capital deferred share which qualifies or is intended to qualify as common equity tier 1 capital (or equivalent) under the rules relating to capital adequacy or prudential requirements published by the Prudential Regulator or other law or regulation (including any regulation of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms) applicable to the Society from time to time;"

- (b) Delete the definitions "Deferred Share" and "Deferred Share Certificate" and insert the following definitions:

""Deferred Share" means a Share which by its terms of issue is a deferred share as defined in the Statutes and includes a permanent interest bearing share and a Core Capital Deferred Share;

"Deferred Share Certificate" means a share certificate issued by the Society in respect of a Deferred Share";

"Deferred Shares Register" (which term may include a separate register for each class of Deferred Shares, if applicable) means the records of the Society maintained for the purposes of Deferred Shares, not being the Register;"

- (c) In the definition "Deposit" start the word "deferred" with upper case "D";

- (d) Insert the following definitions:

"Periodic Distributions" means the distributions (if any) from time to time paid to holders of Core Capital Deferred Shares;

"Periodic Distributions Cap" means £0.15 per Share, being the maximum amount of Periodic Distributions which may be paid on each Core Capital Deferred Share in respect of any Financial Year;

- (e) Delete the definitions "Preferred Share" and "Preferred Share Certificate";

- (f) Insert the following definition:

""Prudential Regulator" means the regulatory authority entitled to exercise supervision over the Society with respect to prudential matters, including the Prudential Regulation Authority or any successor or successors established by the Statutes;"

- (g) Amend the definition "Regulator" to read:

""Regulator" means the relevant regulatory body established under the Financial Services and Markets Act 2000";

- (h) In the definition "Share" in sub-paragraph (i) after the word "payment" insert "(whether in cash or otherwise) or other consideration";
- (i) Delete paragraph (b) and insert:

"In these Rules, unless the context otherwise requires, for any reference to the value of a Shareholding, that value shall be taken as the amount standing to the credit of the Shareholding Member in respect of –

- (i) payments (in cash or otherwise) made on, or other consideration provided form, the Shares, and
- (ii) interest credited by way of capitalisation,

and for the purposes of these Rules, the paid-up or current nominal value of a Deferred Share, or the amount paid or deemed to have been paid (in cash or otherwise) on subscription of a Deferred Share, or such other amount as the Board considers appropriate, shall be treated as being to the Shareholding Member's credit for so long as he/she is entered in the Deferred Shares Register as the holder of a Deferred Share."

## **2 Rule 4 - Membership**

- (a) In Rule 4(1) replace the reference to "Register" with "Deferred Shares Register" and delete to two references to "Preferred Share";
- (b) In Rule 4(8)(b) delete the reference to "Preferred Share", replace the reference to "Register" with "Deferred Shares Register" and after the words "him/her" insert "or on his/her behalf".

## **3 Rule 5 – Death or Bankruptcy of Member**

- (a) In Rule 5(1)(b) after the word "Shareholding" add "other than in respect of a Deferred Share".
- (b) In Rule 5(2):
  - (i) after the reference to "Rule 4(8)," insert ", the applicable terms and conditions of issue in the case of a Deferred Share,"
  - (ii) delete the reference to "Preferred Share".

## **4 Rule 6 - Cessation of Membership**

- (a) Replace Rule 6(1) with the following:

"Subject to paragraphs (2) and (3) below, a Shareholding Member shall cease to be a Shareholding Member if he/she ceases to hold a Share in the Society which, in the case of a Person who is a Member by virtue of holding a Deferred Share, will apply when his/her name is no longer entered in the Deferred Shares Register as the holder of a Deferred Share or a fraction of a Deferred Share."

- (b) In Rule 6(3) replace the introductory words before the word "Society" with:

"Subject to the terms applying to the Share and save in relation to a Deferred Share (in respect of which the terms and conditions of issue shall apply),".

## **5 Rule 8 – Shares**

- (a) In Rule 8(2) start the word "Preferred" with lower case "p";

- (b) Replace Rule 8(3) with the following:

"The terms and conditions of issue on which Shares or classes of Shares are to be issued shall be determined by the Board. Different classes of Deferred Shares may be issued on different terms and conditions including as to ranking, distributions, loss absorbency (including permanent or temporary write-down and re-instatement), conversion into Shares or debt and sharing in surplus assets on a winding-up or dissolution of the Society."

- (c) Start Rule 8(4)(a) with:

"Except in relation to Deferred Shares (in respect of which the terms and conditions of issue shall apply),".

- (d) In Rule 8(5) insert the following introductory words "Except in relation to Deferred Shares, in respect of which the terms and conditions of issue shall apply," and delete the words "including the terms and conditions of issue of any Deferred Share or Preferred Share".

- (e) Delete Rule 8(6) and replace with:

"A Shareholding Member may transfer his Deferred Shares to any Person and no fee shall be charged in respect of a transfer of a Deferred Share. Subject to paragraph (7) below, a Shareholder Member may transfer all or any of his/her Deferred Shares in any manner which is permitted by the terms and conditions of issue and is from time to time approved by the Board.

A fully-paid Deferred Share shall be free from all liens in respect of liabilities to the Society."

- (f) In Rule 8(7) delete the words "or Preferred Shares" in three places.

## **6 Rule 9 - Deposits with and Loans to the Society**

In Rule 9(4) amend the references to read "...Rule 8(4) and (5), Rule 12(5) and Rule 46" and delete the words "Deferred Share holder or Preferred Share holder" and insert "holder of Deferred Shares" and delete the words "or Preferred Share".

## **7 Rule 12 – Direction and Management**

Insert the following new Rule 12(6):

"The Board may determine and from time to time publish the policy of the Society in relation to the Periodic Distributions on any Core Capital Deferred Shares, which may include an expectation of future Periodic Distributions having regard to the ongoing profitability and long term viability of the Society, the need for the Society to ensure that it has adequate capital

resources and such other factors as the Board considers appropriate. The policy must provide that any such expectation (if given) is indicative only and not legally binding on the Society and that Periodic Distributions may be paid at the absolute discretion of the Board. Periodic Distributions may be paid either out of profits made by the Society in the relevant Financial Year or, subject to applicable law and regulation, out of the reserves of the Society available for distribution."

## **8 Rule 13 - Eligibility and Election of Directors**

- (a) In Rule 13(2)(b) delete the words "or Preferred Shares";
- (b) In the final paragraph of Rule 13(4) delete the two references to "or Preferred Shares" and replace the reference to "Register" with "Deferred Shares Register;"

## **9 Rule 27 – Reserves**

- (a) In Rule 27:
  - (i) renumber the existing Rule as 27(1);
  - (ii) in the second sentence, after the second time the word "Statutes" appears, insert "or other applicable regulations, ";
  - (iii) after the word "interest" insert ", distributions";
  - (iv) replace the word "either" with "any";
  - (v) after the final word "Shares" insert "and any restrictions contained in these Rules".
- (b) Insert the following after Rule 27(2):

"Any Core Capital Deferred Share must be issued on terms that limit the amount of the Periodic Distributions that may be paid on any such Core Capital Deferred Share in respect of any given Financial Year to not more than the applicable Periodic Distributions Cap, in order to protect the reserves of the Society."

## **10 Rule 28 – Losses**

- (a) In Rule 28(2):
  - (i) after the word "borne" insert "first" and delete the words after "(if any)" in the first sentence;
  - (ii) insert the following additional sentence:

"If the reserves are insufficient to meet the loss in full, the balance of the loss following depletion of the reserves shall be met by the holders of Deferred Shares, or subordinated debt and, if applicable, other debt in accordance with the terms of those Shares and debts and all applicable laws and regulations. The foregoing provisions of this paragraph shall be without prejudice to any loss absorption by Deferred Shares or debt before depletion of the reserves in the manner and circumstances provided in the terms and conditions of such Deferred Shares or debt or otherwise as provided by applicable law and regulation."

- (b) Move the wording in Rule 28(2) starting "If at any time" to a new Rule 28(3) and renumber existing Rule 28(3) as 28(4) and in new Rule 28(3) start the words "deferred shares" with upper case "D" and "S".

#### **11 Rule 31 – Special Meetings**

- (a) In Rule 31(4) in the sentence starting "For the purposes of ..." delete the two references to "or Preferred Share" and delete the reference to "Register" and insert "Deferred Shares Register";
- (b) In Rule 31(4) in sub-paragraph (ii) before the words "or mortgage account" insert "or a holding of Deferred Shares" and delete the words "or both, or his holding of Deferred Shares or Preferred Shares".

#### **12 Rule 33 – Entitlement to Propose Resolutions**

- (a) At the end of Rule 33(1)(a) delete the two references to "or Preferred Share" and replace the reference to "Register" with "Deferred Shares Register";
- (b) In Rule 33(1)(c)(iii) delete the words "or Preferred Shares".

#### **13 Rule 36 - Entitlement of Members to vote on Resolutions**

- (a) In Rule 36(3) delete the words "or Preferred Shares" and replace the reference to "Register" with "Deferred Shares Register"; and
- (b) In Rule 36(8) delete the words "or Preferred Shares".

#### **14 Rule 39 – Postal Ballots and Electronic Ballots**

In Rule 39(10):

- (a) delete "and" at the end of (a);
- (b) number (b) as (c);
- (c) insert the following as a new (b) "an advertisement in at least one national daily newspaper; and".

#### **15 Rule 44 – Distribution of Surplus Assets on Winding up or Dissolution**

- (a) Delete existing Rule 44(1) and replace with:

"Upon the winding up of the Society, or upon its being dissolved by consent, any surplus remaining after payment in full of the Society's creditors and repayment to Members of the amount of their Shares (together with interest due thereon) according to their priority under their respective terms and conditions of issue (but excluding Core Capital Deferred Shares unless and to the extent provided in their terms and conditions in issue), shall be divided among:

- (a) qualifying Members in proportion to the value of their Shareholding (excluding any Deferred Shares) at the relevant date;

- (b) holders of Deferred Shares (excluding Core Capital Deferred Shares) at the relevant date subject to, and in proportion to the amount specified in, or calculated by reference to, their terms and conditions of issue; and
- (c) holders of Core Capital Deferred Shares at the relevant date subject to, and in proportion to the amount specified in, or calculated by reference to, their terms and conditions of issue.

The relevant date is the earlier of either the date of notice of a winding-up or dissolution resolution or the date of presentation of a winding-up petition or such other date as may be specified by the insolvency official appointed with primary responsibility for the winding-up or dissolution of the Society.

If there are insufficient assets to repay all Members the amounts payable on their Shares in accordance with their terms and conditions of issue, no repayments shall be made in respect of any Deferred Share until after all other Members have been repaid in full.

- (b) In Rule 44(2) before the word "date" insert "relevant", delete the words "of commencement of the distribution or winding-up" after the word "Shares" insert "(excluding any holding of Deferred Shares)."

#### **16 Rule 47 – Sales of Deferred Shares or Preferred Shares of Untraceable Holder**

- (a) In the heading delete the words "or Preferred Shares";
- (b) Replace Rule 47(1) to (7) with the following:
  - "(1) The Society shall be entitled to sell for the best price reasonably obtainable a Deferred Share of a Member, or a Deferred Share to which a Person is entitled by means of transmission, if
    - (a) during the relevant period, the Society has made at least 3 interest payments or distributions in respect of a Deferred Share of the same class as the Deferred Share to be sold;
    - (b) during the relevant period, no interest or distribution payable in respect of the Deferred Share has been claimed;
    - (c) during the relevant period, all warrants or cheques in respect of the Deferred Share, sent to the address and in the manner provided by the Rules or the terms and conditions of issue of the Deferred Share for sending such payments, remain uncashed;
    - (d) during the relevant period, no communication has been received by the Society from the Member or the Person entitled by transmission to the Deferred Share;
    - (e) after expiry of the relevant period, the Society inserts advertisements in both a national newspaper and a newspaper circulating in the area in which the last known address of the Member or the Person entitled by transmission at which service of notices may be effected is located of its intention to sell the Deferred Share; and

- (f) during the period of three months following the publication of those advertisements and, after that period, until the exercise of the power to sell the Deferred Share, the Society has not received any communication from the Member or the Person entitled by transmission to the Deferred Shares.
- (2) For the purpose of paragraph (1) above, "the relevant period" means the period of twelve years immediately preceding the date of publication of the first of any advertisements pursuant to paragraph (1)(e) above.
- (3) To give effect to any sale under this Rule, the Board may appoint any Person to execute as transferor an instrument of transfer of the Deferred Share or take such other action as may be appropriate to effect such transfer and the instrument of transfer, or as the case may be such other action, shall be as effective as if it had been executed or taken by the registered holder of, or Person entitled by transmission to, the Deferred Share.
- (4) A purchaser shall not be bound to see to the application of the purchase moneys, nor shall his/her title to the Deferred Share be affected by any irregularity in, or invalidity of, the proceedings relating to the sale.
- (5) The Society shall account to the Member or other Person entitled to the Deferred Share for the net proceeds of sale and shall be deemed to be his/her debtor, and not a trustee for him/her, in respect thereof.
- (6) No interest shall be payable in respect of the net proceeds and the Society shall not be required to account for any moneys earned thereon.
- (7) Any moneys not accounted for to the Member or other Person entitled to the Deferred Share shall be carried to a separate account and shall be a permanent debt of the Society. Moneys carried to a separate account may be either employed in the business of the Society or invested in such manner (other than Shares in the Society) as the Board may from time to time think fit."

**17 Rule 48 – Register and other records**

- (a) In the heading before the word "Register" add "Deferred Shares";
- (b) Replace Rule 48(1) to (4) with the following:
  - "(1) The Society shall maintain a Deferred Shares Register in which shall be entered the name and address of each holder of a Deferred Share. Transfers and other documents or instructions relating to or affecting the title of any Deferred Shares shall also be recorded in the Deferred Shares Register. No charge shall be made in respect of any entry in the Deferred Shares Register. The Deferred Shares Register shall be maintained at the Principal Office, or at such other place as the Board thinks fit.
  - (2) Every Person, within one month after becoming entered in the Deferred Shares Register as the holder of a Deferred Share (or within such other period as the terms and conditions of issue of the Deferred Shares may provide), shall, if he/she shall make a written request to the Society at the

time of applying to be so entered, be supplied by the Society with a Deferred Share Certificate (which shall not be the property of the Society).

- (3) Every Person entered in the records of the Society as the holder of a Deferred Share who has not previously requested to be supplied by the Society with a Deferred Share Certificate shall within one month after making a written request to the Society be supplied by the Society with a Deferred Share Certificate. Save as aforesaid, nothing in these Rules shall require a Deferred Share to be evidenced by a Deferred Share Certificate or other written instrument.
- (4) Any Member losing his/her Deferred Share Certificate shall immediately give notice in writing of such loss to the Society at its Principal Office. If a Deferred Share Certificate is damaged or alleged to have been lost, stolen or destroyed, a new Deferred Share Certificate representing the same Shares shall be issued to the holder upon request, subject to delivery up of the old Certificate or (if alleged to have been lost, stolen or destroyed) subject to compliance with such conditions as to evidence and indemnity as the Board may think fit and to payment of any exceptional expenses of the Society incidental to its investigation of the evidence of such alleged loss, theft or destruction. Where a holder of a certified Deferred Share has sold part of his/her holding he/she will be entitled to a Deferred Share Certificate for the balance without charge."