

**27 September 2015**  
**National Board Meeting Minutes**

**SPECIAL MEETING OF THE NATIONAL BOARD OF DIRECTORS**  
**THE ENGLISH-SPEAKING UNION OF THE UNITED STATES**  
**144 EAST 39<sup>TH</sup> STREET, NEW YORK, NY 10016**  
**SUNDAY, SEPTEMBER 27, 2015, 4:00 PM – 5:30 PM (EDT) BY TELECONFERENCE**

**MINUTES**

By Phone: Laura Phelps, Vice Chair; E. Quinn Peeper, President; Christopher Broadwell, Secretary of the Corporation & Executive Director; Gloria Norris, Region II Chair; Mary Alice Phelan, Region V Chair; Jeffrey Schnabel, Region VI Chair; James Kerr, Jr., Region VII Chair; William Maschmeier, Region VIII Chair; Paul Beresford-Hill MBE; M. Christine Carty; Loveday Conquest; Polly W. Cox; F. David Grissett; Darrell W. Hill; Christopher Hodgkins; T. Hoke Huss; Charles D. Reaves; Anne Westbrook; Henry P. Williams III; George T. Williamson

Excused: Marie Dora Thornburg OBE, President Emerita; Hollister Sturges, Treasurer; Jan Slee; Region I Chair; Karen Blair-Brand, Region III Chair; Ellen LeCompte, Region IV Chair; Donald Best; Paul Haigney; Christopher Medalis; Philip A. Sjogren; Mark Stollar;

Invited Guests: Alice Irby, Branch Services Committee; Marla Conley, Schnader, Harrison, Segal and Lewis LLP

Observers (Staff): Dorothy Fiedler, Assistant to the Executive Director/Recording Secretary

Presiding: Laura Phelps, Vice Chair

Welcome – Laura Phelps welcomed the members of the National Board to the teleconference. She thanked everyone for participating at this exciting time in the organization's history, in its mission and in educational programs, including the ESU debate program. Christopher Broadwell, Secretary of the Corporation, called the roll and announced the quorum by phone.

Comments from the Vice Chair - Laura Phelps

The purposes of the National Board meeting by teleconference are:

- To hear the Report of the Nominating Committee
- To hear the Report of the Branch Services Committee and
- To hear the Report from the Executive Director concerning the Headquarters building

Ms. Phelps asked the Nominating Committee for its report.

Report of the Nominating Committee – Polly Cox, Chair

Ms. Cox presented the slate for election to the National Board of Directors in the Class of 2017 as attached. The members of the Nominating Committee are Polly Cox, Chair, William Maschmeier, F. David Grissett, Christopher Medalis, Charles Reaves, and George Williamson. The slate will be presented for a vote at the 2015 Annual General Meeting on October 11.

Ms. Cox commented on the resignation letter from ESUUS Chairman Josiah Bunting III as attached. Ms. Cox reported that the Nominating Committee found an excellent candidate,

## 27 September 2015

### National Board Meeting Minutes

National Board member Dr. Paul Beresford-Hill MBE, for the position of Chairman. On behalf of the Nominating Committee, Polly Cox placed the name of Paul Beresford-Hill in nomination as Chairman of the English-Speaking Union of the United States with the following motion: "I move that Paul Beresford-Hill be elected to serve as Chairman of The English-Speaking Union of the United States and as a member of its National Board of Directors and Executive Committee and *ex officio* as the Chairman or Vice Chairman of the ESU International Council effective immediately upon the resignation of the current Chairman." Laura Phelps asked for a second, the motion was seconded and passed unanimously.

#### Comments from the New Chairman – Paul Beresford-Hill

Dr. Beresford-Hill commented that he was honored and privileged to join in the meeting as the new Chairman of the English-Speaking Union of the United States charged with helping the ESU and its mission. He paid tribute to his predecessor, Josiah Bunting III, and to the mission of the ESU to promote the English language in communications across nations; to allow immigrant's access to community, and to reinforce the special relationship in the bonds between the USA and the United Kingdom. He thanked the Board for the privilege of leading the ESUUS. Dr. Beresford-Hill then asked for the Report of the Branch Services Committee.

#### Report of the Branch Services Committee - Jeffrey Schnabel, Chair

Mr. Schnabel commented that the Branch Services Committee was charged by the National Board at its meeting on April 26, 2015 to report to a Special Meeting of the National Board to fully discuss the timing and consider the implications of the committee's proposal for the reorganization of the legal structure of the ESU and its Branches. The attached introductory statement from the Branch Services Committee at its meeting on September 22, 2015 was presented to the National Board for discussion.

**Historical Background:** Today, the ESUUS is organized as a 501(c)(3) nonprofit, public charity organization exempt from federal taxes and is incorporated in Delaware and qualified to do business as a foreign corporation in New York. The Branches operate under a set of bylaws approved by the National Board. However, the Branch bylaws are neither uniform nor standardized and vary greatly in their scope of responsibility, authority and control.

**Concerns:** The current structure of the Branches as unincorporated associations leaves the Officers, Members and Branch volunteers exposed to personal liability. In recent years, the IRS has been closely scrutinizing all nonprofits and their operations. The IRS has become much more aggressive in monitoring nonprofits' operations, particularly with regard to their structure and how much liability exposure they have. Each year, the IRS revokes the tax-exempt status of more than 100 501(c)(3) organizations. Because of the concerns stated above, among others, nonprofit organizations are taking steps to organize their legal structure so liability at all levels is diminished.

**Branch Services Committee:** The Branch Services Committee was formed, in part:

- A. to investigate this matter from a legal perspective,
- B. to clarify the relationship between ESUUS and each Branch,
- C. to determine the best practices among nonprofit organizations to limit liability of individuals, branches and the National organization as a whole.
- D. to address the changing business model of certain Branches which can no longer sustain their operations under the current universal branch model of a full-service Branch with an

**27 September 2015**  
**National Board Meeting Minutes**

active Board of Directors and education-based programs as part of fulfilling ESU's Mission Statement.

**Recommendations:** The Committee makes the following recommendations after reviewing all options for the best legal structure which would increase liability protection for all ESU volunteers and staff and would establish a formal, uniform and consistent relationship with each Branch and Headquarters:

- A. Each Branch organizes as a single member limited liability company (an "LLC") in the State of Delaware, with ESUUS serving as the Branch's sole member. This would allow Branches to be separate legal entities from each other and from ESUUS but would be viewed as one entity for federal tax purposes while still generally limiting the liability ESUUS may have from activities arising within any Branch's LLC.
- B. For tax purposes, ESUUS remain as the sole 501(c)(3) entity and it file one federal tax return (Form 990) that would include all of the Branches' activities. After the transition, the Group Return would no longer be filed. For state law compliance (e.g. registration to do business and charitable solicitation), each Branch would be required to file its own forms. The Committee recommends using an outside filing service to assure uniform filing compliance.
- C. Branches could operate under the terms of a uniform Board-Managed Operating Agreement (BMOA). LLCs are required to be administered using an operating agreement as opposed to a set of bylaws. However, the BMOA would have very similar provisions as the Branches' former bylaws. The BMOA would be supplemented with a Branch Operations Manual (BOM), which currently exists but would be updated as necessary to address specific terms and conditions in the BMOA.
- D. Branches that do not have sufficient membership to operate with a BMOA would be offered the option to form an LLC and operate under the management of ESUUS under a Member Managed Operating Agreement (MMOA).

**Conclusions:**

- 1. The attached document titled, "ESU Board-Managed Operating Agreement 9-22-15" is the final result of the Branch Services Committee's thirteen month study, refinement and legal review with the assistance of the Schnader Harrison Segal & Lewis law firm to present an LLC operating agreement for the Branches that protects Branch individuals and gives their Boards of Directors a valuable business tool that allows them to operate their own business in a progressive, professional manner while meeting the standards and best practices which align with the most successful nonprofit organizations in the U.S.
- 2. The Branch Services Committee recommends that the National Board authorize the restructuring of the Branches as LLCs, approve the attached Board-Managed Operating Agreement and also authorize the Committee to propose the amendments in the National Bylaws necessary to effect the LLC structure.

**Discussion Period:**

Charles Reaves commented that as a lawyer he sees this is an excellent proposal allowing the Branches with Boards to continue as Branch Board-managed LLCs with ESU US as the parent. He commented that it would allow the National organization to continue offering the Branches with Directors and Officers Liability Insurance as group coverage. Marla Conley of Schnader Harrison law firm reported that under the LLC organizational plan the Branches would not have to file their own IRS tax returns and would be included in one 990 federal filing by ESU US. She continued that state filings activities, should there be any, would be the responsibility of the

## **27 September 2015**

### **National Board Meeting Minutes**

individual Branches. Jeffrey Schnabel commented that a version of the Member Managed LLC Operating Agreement will be drafted by the committee for those few Branches without a Branch Board with the goal of becoming a “full service” Branch in the future. Alice Irby commented that this agreement which strikes a balance between the responsibilities of ESU National and the Branches is good because it clearly defines the functions of the National organization and the Branches toward financial support for both and keeping both working toward the mission.

Concerning presentation of the proposal to the Branches, Christopher Broadwell noted that perhaps 1/3 of Branch Presidents will attend the Board/Branch Presidents’ Conclave on October 10 and that would be the ideal time to launch the information campaign. Several Board members discussed the vital role that the Regional Chairs should play in “rolling out” the program through the Branches, as all the Regional Chairs are on the Branch Services Committee.

Henry Williams asked whether the Branch Boards should be given the proposal now for review, and consensus from the Board was that distribution of the draft documents to the Branches was premature until the Board had ratified their acceptance. The Chairman asked the Board if it wanted to take action as a Board on the proposal. George Williamson commented that the proposal was confusing, that his Branch could not agree to points including non-invitation only membership and term limits, and that it was too soon for the National Board to take action on the proposal. He suggested that lawyers should be engaged to review it on behalf of the Branches.

Christine Carty commented that it is the Board that must decide whether the organization needs to restructure or not to limit liability through the LLC structure, and that explication then go to the Branches. Changes to the corporate structure would entail changing the current National by-laws as well and appropriate, currently not complete, government filings need to be undertaken. George Williamson questioned the cost for the reorganization and Mr. Broadwell commented that an itemized proposal from Schnader had been prepared and passed by the Audit Committee, as Schnader’s proposal fell within the current Board approved operating budget for the project, the work had commenced. Christine Carty stated that, as a Board member, her work on the project has been pro bono but that legal fees of some \$25,000 for staff lawyers have been incurred to date with a total budget of \$60,000 to \$65,000 needed to complete the program, presented in segments should the project be halted.

Chair Dr. Beresford-Hill commented that for the ESU to be successful into the future it is essential it organize itself into a unified, legally sound organization. He called on the Board to move forward and compromise and proposed to continue the discussion toward solidification at the fall meeting of the National Board on October 10, 2015. He proposed that the Branch Services Committee continue to prepare its presentation for that Board meeting. He proposed that a vote on the proposal be deferred until the October 10, 2015 meeting.

Christine Carty commented that the Branch Services Committee is satisfied that this proposal is the direction that the Board should go. Other Board members might need more time to come to understand the information provided by the committee and the language of the Board Managed Operating Agreement, and that they should review it and put their questions in writing to the committee for explanation. Several Board members commented on the need for Branch Boards to review and approve the agreement. Judge James Kerr commented that there seems to be a

## **27 September 2015**

### **National Board Meeting Minutes**

misunderstanding as the ESU bylaws do not require approval by the local Branch Boards, and while their questions and comments might be helpful, the responsibility of the decision falls to the National Board. It may be made on October 10. Christine Carty responded that the Branches are involved because they will have to ratify any amendments to the bylaws necessitated by the LLC restructuring. She called for the Board to set an internal deadline for settling the restructuring, as the Board has already been working on it for several years.

Jeffrey Schnabel called for any and all questions from the Board concerning the proposal for the reorganization of the governance and legal structure of the ESUUS and its Branches by September 30, -which would allow time to read and study the ramifications of the discussion before the next meeting of the National Board of Directors on October 10.

Chairman Paul Beresford-Hill called for all Board members to study carefully the documents to become fully acquainted with them to be sure that they are fully understood and that Board members will be clear on the ramifications on what they will mean to the future of the ESU. President E. Quinn Peeper thanked Christine Carty for her pro bono work done so far for the Branch Services Committee.

#### Report of the Executive Director – Christopher Broadwell

Mr. Broadwell asked that all National Board members register for the 2015 Annual Conference October 10-12 as soon as possible, if they have not already done so. Mr. Broadwell called for a House Committee to for the assessment of the Headquarters building, including structural and ADA issues and the Certificate of Occupancy. The House Committee would coordinate all legal work concerning these issues and would be a Committee of the Board. Dr. Beresford-Hill appointed four Board members to the House Committee to include Laura Phelps, Anne Westbrook, Christine Carty and himself. A motion was made to approve such committee which was seconded and passed unanimously.

The meeting was adjourned at 5:35 pm Eastern Daylight Time.

#### Future Dates:

Fall Semi-annual Meeting of the National Board, Saturday, October 10, 2015

2015 Annual Conference, New York City, Columbus Day Weekend, October 10-12, 2015

2015 International Council Meeting, Dartmouth House, London, October 16-18, 2015