

September 30, 2003

Bruce O. Jolly, Jr., Esq.
Shook, Hardy & Bacon, L.L.P.
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2004

Re: Fidelity Bond Removal's Effect on Director's Service.

Dear Mr. Jolly:

You have asked if the cancellation or removal of a federal credit union (FCU) director's fidelity bond would allow an FCU board to declare the seat vacant under the FCU Bylaws. Yes, the removal of the fidelity bond renders the director disqualified from serving and, therefore, unless the director resigns or the FCU obtains other fidelity bond covering the director, the FCU board must declare the office vacant.

FCU board members must have bond coverage under a bond approved by the National Credit Union Administration (NCUA). 12 U.S.C. §1761b(2); 12 C.F.R. §§713.3(b), 713.4. NCUA's regulations provide that an FCU's "bond coverage must . . . [i]nclude fidelity bonds that cover fraud and dishonesty by all employees, directors, officers, supervisory committee members, and credit committee members." 12 C.F.R. §713.3(b).

A director's failure to qualify for bonding constitutes the director's failure to perform a required duty and would render the director disqualified from serving in the office. FCU Bylaws, Article VI, Section 8. Since the director is disqualified and unable to perform directorial duties, "the board may by resolution designate another member to fill the position temporarily." *Id.* Then, unless the director resigns first, the FCU board can declare the office vacant. *Id.*

The FCU Bylaws provide that an FCU board can fill the vacancy by a majority vote of the remaining directors or reduce the number of directors. A replacement director would "hold office only until the next annual meeting, at which any unexpired terms will be filled by vote of the members, and until the qualification of their successors." FCU Bylaws, Article VI, Section 4. In certain circumstances, a board can by resolution reduce the number of directors to any odd number from five to fifteen by the board's resolution. FCU Bylaws, Article VI, Section 1. A board may reduce the number only "if corresponding vacancies exist as a result of deaths, resignations, expiration of terms of office, or other actions provided by these bylaws." *Id.* A vacancy resulting from a director's failure to qualify for fidelity bond coverage would qualify as such an action and may be appropriate, assuming the reduction in the number of directors would result in an odd number of directors between five and fifteen. An FCU board may determine which of these options would serve the FCU's interests but, in any event, an unbonded director cannot serve as a director of an FCU.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/RMM:bhs

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