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MEMORANDUM

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FROM: Assistant General Counsel
Timothy P. McCollum

SUBJ: Nonstandard Bylaw Amendments, []

DATE: August 11, 1988

You requested our comment on the nonstandard bylaw amendments submitted by [].

A brief description of each proposed amendment and our comments thereto follow.

1. Article V, Section 2. The proposed amendment will allow the FCU to give notice of its special meetings by two publications in one newspaper and posting at all [] offices. Notice of annual meetings will be given by an insert in the monthly FCU statement as well as by publication and posting. The amendment will also require that the notice disclose the record date for determining members eligible to vote. The standard FCU bylaws and amendments do not allow for notice of a special meeting by publication and posting only. Notice by personal delivery or mail is required. The FCU Act and NCUA Rules and Regulations do not address notice requirements. Under the FCU Act and NCUA's Rules and Regulations, the nonstandard amendment is not a problem. Please be aware that approval would apparently run counter to what is legally required of similar organizations. Many states, for example, require that corporations subject to their jurisdiction give personal notice of special meetings. The Revised Model Business Corporation Act ("RMBCA"), which has been widely adopted, requires that personal notice be given (orally, by mail, telephone, telegraph, or private carrier). Notice may be made by publication only if personal notice is impractical. The cost of mailing notice to members does not make it impractical. Although FCU's are not subject to the RMBCA or state law governing notice requirements, you may want to consider continuing personal notice from a policy standpoint. We have no problem with the record date for voting eligibility being included in the notice.

2. Article V, Section 4. This proposed amendment eliminates the credit committee report at the annual meeting. The report would be included within the report of the President or the Treasurer. We have no legal problem with this proposed amendment.

3. Article VI, Section 1. This proposed amendment allows the board of directors to provide nominees for any board vacancy when the nominating committee fails to do so. It also confirms that each nominating petition may serve to nominate only one person. We have no legal problems with this proposed amendment.

4. Article VI, Section 3. The proposed amendment eliminates the reference to the credit committee in the order of nominations for elections. Only the board of directors is left. We have no legal problems with this proposed amendment assuming that the FCU either has no credit committee or has a credit committee appointed by the board of directors.

5. Article VI, Section 4. The proposed amendment states that the board of directors will establish reasonable rules as to the form and substantiation of written designations for voting by non-natural persons. Section 110 of the FCU Act [12 U.S.C. §1760] states:

No member shall be entitled to vote by proxy, but a member other than a natural person may vote through an agent designated for that purpose.

The board's rules would be a reasonable fleshing out of this authority.

6. Article VI, Section 8(b). This proposed amendment makes minor changes concerning the placement of the ballot boxes and nominees' background statements. We have no legal problems with this proposed amendment.

7. Article VI, Section 8(d). This proposed amendment states that voting at the FCU offices (not during the annual meeting) shall end one day before the annual meeting. We have no legal problems with this proposed amendment.