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FROM: Assistant General Counsel

Hattie M. Ulan

SUBJ: Nonstandard Bylaw Amendment []

(Your July 3, 1989, Memo)

DATE: July 31, 1989

[] has submitted a nonstandard Bylaw amendment to Article VII, Section 2 of its bylaws. The amendment would permit an individual, appointed to fill a vacancy created by an increase in the size of the board, to serve for an initial term which would extend beyond the next annual election. You are inclined to deny the proposed amendment because it appears to conflict with Section 111 of the FCU Act. We agree. Also, we note that the terms of the present board do not conform to the requirements of Article VI, Section 2 of the corporate FCU bylaws. Both the standard bylaws and the corporate bylaws require that regular terms of all board members be for the same number of years.

APPLICABLE LAW AND BYLAW ARTICLES

Section 111(a) of the FCU Act (12 U.S.C. §1761(a)) provides, in part:

The board shall consist of an odd number of directors, at least five in number, to be elected annually by and from the members as the bylaws provide. Any vacancy occurring on the board shall be filled until the next annual election by appointment by the remainder of the directors.

Article VI, Sections 2 and 3 of the Corporate Federal Credit Union Bylaws provides:

2. Regular terms of office for directors shall be for periods of either 1, 2, or 3 years as the board shall determine; provided, however, that all regular terms shall be for the same number of years and until the election and qualification of successors. The regular terms shall be so fixed at the beginning, or upon an increase or decrease in the number of the directors, that approximately an equal number of regular terms shall expire at each annual meeting.

3. Any vacancy on the board . . . shall be filled by vote of a majority of the directors then holding office. Directors . . . so appointed shall hold office only until the next annual meeting, at which any unexpired terms shall be filled by vote of the members, and until the qualification of their successors.

The standard bylaws (for natural person credit unions) have similar provisions. (See Article VII, Sections 2 and 3.)

ANALYSIS

All board positions should have the same regular term (1, 2 or 3 years). The initial term of any newly-created positions on the board of directors should be calculated so that approximately an equal number of board positions are open for election at each annual meeting. In such situations, the board of directors creates the new positions and fills them pursuant to Article VI, Section 3 (until the next annual meeting). Board members appointed under this procedure hold office only until the next annual meeting, at which time all newly-created positions would be filled for their initial term by a vote of the members. The initial terms of the new positions should be selected so that approximately an equal number of all board positions expire at each annual meeting. The initial terms will not be the same for all

directors. After the initial term of a board position has expired, the term for that board seat will be the regular term. The regular term will be the same for all board members.

[] nonstandard bylaw amendment does not comply with Section 111 of the FCU Act and Article VI, Section 3 of the Corporate Credit Union Bylaws. It is impermissible because some of the directors appointed to fill the newly-created board positions will hold office until after the next annual meeting. All newly-created board positions should be filled by an election held at the next annual meeting.

The [] letter of May 19, 1989, to your office indicates that the current board positions are structured so that two directors are elected for three years, two directors are elected for two years, and one director is elected for one year. Therefore,

[] should adjust the terms of its present board so that it complies with Article VI, Section 2; that is, all regular terms must be for the same duration.