

GC/MM:sg

SSIC 3701

89-0706

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FROM: Assistant General Counsel

Hattie M. Ulan

SUBJECT: Nonstandard Bylaw Amendment, Article IX

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(Your June 26, 1989, Memo)

DATE: July 31, 1989

You have asked that we comment on [] ("FCU") request for a number of changes to Article IX of their bylaws. We apologize for the delay in our response. Your memorandum was not received by us until the 11th of July. We basically agree with your proposed recommendations on each of the amendments. Our comments on each of the amendments are addressed separately below.

1. Section 1. First sentence changed to read: The credit committee shall consist of (___members) three regular and two alternate members. The rest of the section is standard wording.

As you point out, in Section 4 of the proposed bylaw amendment the FCU is requesting that alternate members be allowed to take part in all deliberations and voting. We agree that, if this is the case, there is no real difference between a regular committee member and an alternate committee member. We agree that the FCU should change the number of committee members to five and not have any alternates. Section 114 of the FCU Act (12 U.S.C. 1761c) requires that a majority of the credit committee be present at a meeting to approve loan applications. A majority (3) of the full committee (5) must be present to approve loan applications.

2. Section 2. First sentence changed to read: Except for the chair of the committee, . . . (rest of the section is standard wording).

This would permit one regular member of the committee to be appointed annually by the board to serve as chair of the committee. The rest of the committee would be elected by the credit union membership.

Section 114 of the FCU Act states in part:

(a) If the bylaws provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which shall consist of an odd number of members of the credit union, but which shall not include more than one loan officer. The method used shall be set forth in the bylaws . . .

The FCU Act does not prohibit a credit committee from having members that are both elected and appointed. Therefore we have no legal objection to the approval of this portion of the amendment request.

Section 3. This would allow the FCU to have two regular and two alternate members of the FCU elected by the membership and one regular member to be appointed annually by the board as the chair of the committee.

We have the same legal objection here as we did with Section 1 above. The alternate members are serving the same

functions as the regular members. There is no legal objection to having one member appointed annually by the board as the chair of the committee, see Section 2 above.

Section 4. This combines sections 3 and 4 of the bylaw. It would allow the credit committee to choose from its number a vice chair, as well as a secretary. In addition, the chair and the secretary may not be the same person. The amendment would also allow the president and/or the vice president of the credit union to serve as members of the credit committee on an ad hoc basis when there is an emergency situation and inaction by the committee is due to a lack of a quorum.

We have no legal objections to the portions of the bylaw amendment which would allow the credit committee to choose from its number a vice chair, as well as a secretary, and with the office of the chair and the secretary being held by different individuals. However, the provision of the amendment concerning the president and/or vice president serving on the committee is inconsistent with the FCU Act. Section 114 of the FCU Act clearly states how the credit committee is established. The only method for the president and/or the vice president to become members of the credit committee is if they are properly appointed or elected in accordance with the bylaws and the FCU Act. We strongly recommend that this provision of the amendment request be denied.