

GC/JT:sg

SSIC 3701

89-1212

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FROM: Associate General Counsel

Hattie M. Ulan

SUBJ: [] Bylaws (Your December [], 1989, Memorandum)

DATE: January 11, 1990

Article XIX, Section 3 of the Standard Federal Credit Union Bylaws permits any director, committee member, officer, or employee of the credit union to be removed from office by the affirmative vote of a majority of the members under specific conditions. The Corporate FCU Bylaws do not contain a similar provision. You asked for our comments on whether the provision should be made available to corporate FCU's. We have no problem with issuing the provision as a standard bylaw amendment for corporate FCU's. However, for the reasons discussed below, we would exclude the provision in the bylaw that permits the membership to remove employees.

ANALYSIS

Article XIX, Section 3 of the Federal Credit Union Bylaws provides:

Notwithstanding any other provisions in these bylaws, any director, committee member, officer, or employee of this credit union may be removed from office by the affirmative vote of a majority of the members present at a special meeting called for the purpose, but only after an opportunity has been given him to be heard.

The Corporate FCU Bylaws do not contain a provision paralleling Article XIX, Section 3. Article IX, Section 5 of the Corporate FCU Bylaws provides:

By unanimous vote, the supervisory committee may suspend until the next meeting of the members any director, executive officer, or member of the credit committee. In the event of any such suspension, the supervisory committee shall call a special meeting of the members to act on said suspension, which meeting shall be held not fewer than 7 nor more than 14 days after such suspension. The chairman of the committee shall act as chairman of the meeting unless the members select another person to act as chairman.

The preamble to the Corporate FCU Bylaws does not explain why a provision paralleling Article XIX, Section 3 was not included in the Corporate FCU Bylaws. We see no problem with making a similar provision available to the corporates through a standard bylaw amendment. However, we recommend that the standard bylaw amendment not provide the membership with the right to remove employees.

Generally, under corporate law, the group that elects an individual to office also has the power to remove him. This principle was incorporated into Article XIX, Section 3 of the Standard FCU Bylaws. The bylaw goes a step further from this principle in that it also authorizes the membership to remove employees. We have reviewed several requests from natural person FCU's seeking a nonstandard bylaw amendment that would remove the right of the membership to remove employees. We have not objected to these requests, noting that they are consistent with corporate law. CUNA recently submitted a request for a standard bylaw amendment eliminating the membership's right to remove employees. We are circulating this request to the Regions and your Office for comment.

If it is determined that a standard bylaw amendment be made available to corporate FCU'S, we suggest that the reference to employees be deleted. Providing the membership of the corporate FCU's with the right to terminate

employees may unduly interfere with the operations of the corporates. We could review exceptions to this position on a case-by-case basis should the need arise.