

GC/LH:sg

SSIC 3700

90-0405

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: [] Nonstandard Bylaw Amendment

(Your March 29 1990 Memorandum)

Date: June 4, 1990

You have asked that we comment on a proposed nonstandard bylaw amendment submitted by []. You have indicated that you are inclined to approve the amendment.

ANALYSIS

The proposed amendment adds Section 8, providing for indemnification of the FCU's officials and employees under the Model Business Corporation Act, to Article XIX of the bylaws. The FCU's attorney has made several modifications the standard language, in order to: 1) assure officials a employees of the credit union that they will be indemnified as long as they act in good faith; 2) more closely follow language of the Model Business Corporation Act; and 3) clarify that the credit union does not intend to extend indemnification beyond the confines of the Model Business Corporation Act.

We recommend that the proposed amendment not be approved. The standard bylaw adequately addresses counsel's concerns providing that officials and employees may be indemnified only "to the extent authorized by the [Model Business Corporation Act]." Additional restrictions may be adopted board resolution and need not be part of the bylaws.

Furthermore, the standard bylaw amendment was developed that NCUA would not be required to engage in the time-consuming process of reviewing every proposed indemnification bylaw to ensure compliance with state law or the Model Business Corporation Act. Retreating from that position in the instant case might open the door to consideration of numerous similar nonstandard bylaws in the future. Attached is an earlier memorandum addressing a similar issue.

Attachment GC/LH:sg

SSIC 3700

90-0334

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FROM: Hattie M. Ulan, Associate General Counsel

SUBJ: [] Nonstandard Bylaw Amendments

(Your March 15, 1990, Memorandum)

DATE: April 19, 1990

You have asked that we comment on two proposed nonstandard bylaw amendments submitted by [].

ANALYSIS

The proposed amendment to Article VI, Section 1, changes the first sentence from "At least 120 days prior to each annual meeting the president shall ..." to "At least 120 days prior to each annual meeting the executive officer shall.....". The FCU states that its executive officer is the chairman of the board and its president is the management official. We have no Legal objection to this amendment. The FCU has the authority, per Letter to Credit Unions No. 70, to establish its own officer titles, including the decision to designate the management official as president and the executive officer the chairman of the board.

The second proposed amendment adds Section 8, providing for indemnification of the FCU's officials and employees, to Article XIX of the bylaws. The FCU has modified the standard language to provide that indemnification is not available for an employee or official who acts in bad faith or dishonestly, receives an improper personal benefit, or in the case of a criminal proceeding had reasonable cause to believe that the act was unlawful. The FCU states that it was advised that the modification was necessary to bring the amendment into compliance with Maryland law and to clarify what standards of conduct are covered. We recommend that the proposed amendment not be approved.

The standard bylaw amendment was developed so that NCUA would not be required to engage in the time-consuming process of reviewing every proposed indemnification bylaw to ensure compliance with state law or the Model Business Corporation Act. Retreating from that position in the instant case might open the door to consideration of numerous similar nonstandard bylaws in the future. We believe that the standard bylaw adequately addresses the FCU's concerns by providing that officials and employees may be indemnified only "to the extent authorized by the law of the state of [Maryland]." We recommend that any state law particularities be adopted by board resolution. They need not be part of the bylaws.