

GC/LH:sg

SSIC 6080

94-0705

TO: []

FROM: Richard S. Schulman, Associate General Counsel

SUBJ: [] Bylaw Amendment

(The July 6, 1994, Memorandum of the Director, Office of Examination and Insurance)

DATE: November 18, 1994

[] has submitted a request for an amendment to its bylaws to provide for indemnification of current and former officials and employees. The corporate's propose amendment is not consistent with the standard indemnification bylaw amendment.

[] had no problem with the proposed language and asked if we had any legal concerns.

Analysis

The standard bylaw amendment providing for indemnification was developed so that staff would not have to review individual proposed bylaws to ensure compliance with state law or the Model Business Corporation Act. In the past, we have recommended that proposed nonstandard indemnification bylaws not be approved, fearing that approval of one would open the door to consideration of numerous such bylaws in the future. We have attached two previous memoranda on this issue. Although we have no specific concerns about this proposed bylaw, we have not determined that it is in compliance with Massachusetts law. Rather than doing so, we recommend that it be disapproved for the reason stated herein.

We believe that the standard bylaw amendment for natural person credit unions is

adequate to meet [] needs. [] has expressed concern that the bylaw be

consistent with Massachusetts law. The standard amendment will provide indemnification "to the extent authorized by the state of _____." [] can simply insert "Massachusetts." As noted in our previous memoranda, additional provisions can be adopted by board resolution.

Although we recommend that [] request be "disapproved," your staff does not

have the authority to do so, as the NCUA Board has not delegated the authority to decide corporate credit union nonstandard bylaw amendment requests. If [] could be persuaded to withdraw its request, we recommend that it, on its own, adopt the standard bylaw amendment discussed above even though the amendment was not drafted for corporate credit unions. It is my opinion that the NCUA Board does not need to address this request if [] is willing to adopt the existing bylaw amendment. The issue of indemnification raises no special concerns in the corporate credit union context.

That there is a question about a corporate credit union's authority to adopt one of the standard bylaw amendments for natural person credit unions (and in light of the problems that can arise from trying to do so when corporate and natural person bylaws are numbered and worded differently *) illustrates the need to develop a set of standard amendments specifically for corporates.

Attachments

*For example, the standard indemnification provision is Article XIX, Section 8, of the natural person federal credit union bylaws, but the comparable provision in the corporate federal credit union bylaws would be Article XV, Section 4.

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SSIC 3700

90-0334

[]

FROM: Hattie M. Ulan, .Associate General Counsel

SUBJ: [] nonstandard Bylaw Amendments

(Your March 15, 1990, Memorandum)

DATE: April 9, 1990

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

ANALYSIS

The proposed amendment Article VI Section 1, changes the first sentence from "At least 20 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 has modified the standard language to provide that indemnification is not available for an employee or official who acts in bad faith or dishonesty, receives an improper personal benefit, of 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 of 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.

GC/LH:sg

SSIC 3700

90-0405

[]

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 to the standard language, in order to: 1) assure officials and employees of the credit union that they will be indemnified as long as they act in good faith; 2) more closely follow the 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 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 by board resolution and need not be part of the bylaws.

Furthermore, 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 the Model Business Corporation Act. Retreating from that consideration of numerous similar nonstandard bylaws in the future. Attached is an earlier memorandum addressing a similar issue.

Attachment