

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: [] Corporate Federal Credit Union Nonstandard Bylaw Amendments

DATE: February 19, 2004

You have asked for our concurrence on your decision to approve three of []'s bylaw amendment requests and disapprove one. The Board has delegated to you the authority to approve or disapprove bylaw amendments with the concurrence of this office. We concur with some but not all of your recommendations as discussed below.

Article III Membership

[] proposes adding a provision to this section that would allow a member credit union that converts to a mutual saving association to remain a member. In conjunction with this request, [] is requesting an amendment to its field of membership (FOM) to add mutual saving associations that were member credit unions. We concur with your decision to deny this request.

We previously stated in the attached OGC Legal Opinion 98-0445, dated June 9, 1998, that "at the time a natural person credit union converts to a mutual savings association, its credit union charter is cancelled and its membership in the corporate credit union is automatically terminated." Our position is that the "once a member always a member" bylaw does not apply because the credit union no longer exists and has, in effect, voluntarily terminated its membership.

Although not addressed in your memo, we would recommend against allowing [] to amend its FOM to include mutual savings associations that were member credit unions. We believe inclusion of this group in a corporate's FOM would conflict with agency policy and a corporate's mission of operating "primarily for the purpose of serving other credit unions." 12 C.F.R. §704.2. Although we permit a corporate's FOM to include organizations that are not credit unions, those organizations generally, although not always, have some connection with the credit unions, such as credit union service organizations, or nonprofit cooperatives.

Article VII

[] has requested three changes under this provision, all of which you have recommended approving. In addition, [] has made a change to its bylaws that is not addressed in its request.

First, [] requests a change to Section 1 to limit board positions to senior management employees of the corporate's organizational members. This proposed change is impermissible because it serves as an absolute bar to serving on the board. As explained in two prior legal opinions, OGC 00-0825, dated September 8, 2000, and OGC 90-0529, dated August 2, 1990, a nominating committee may establish selection criteria but a bylaw provision prohibiting a member who does not meet the selection criteria from seeking nomination through the petition process is impermissible.

Second, [] has made three amendments to Section 2, two of which are described in its correspondence and one that is inserted in the bylaw text with no explanation.

In the first paragraph of Section 2, although not referenced in its request, [] has amended the section by adding a paragraph that states a board member may continue to serve "unless the organizational member of this credit union that is represented by such director revokes its consent." This portion of the new paragraph, although not illegal, is unnecessary. The next sentence states that a director for whom consent has been revoked may continue to serve until the next annual meeting. We recommend against approving this amendment. Allowing a director who is no longer a

designated representative to continue to serve is analogous to allowing an individual who is no longer a member of a natural person credit union to continue to serve on its board. Once an individual's authority to serve on the board is revoked, that individual may not continue to serve. The seat becomes vacant and should be filled in accordance with Article VII, Section 3 of the Corporate FCU Bylaws.

Next, [] requests adding another new paragraph to Section 2 in an addendum to its original request. We note the proposed bylaw language was included in the original request but with no explanation. This proposed provision would allow a director to continue to serve on the board, even after the organizational entity for which he is serving as a designated representative revokes its consent, if another organizational entity grants its consent. Like the proposed provision discussed in the previous paragraph, from the moment consent is revoked, that individual no longer has the authority to serve on the board. The seat should be declared vacant and filled in the manner described in Article VII, Section 3 of the Corporate FCU Bylaws.

Finally, [] proposes adding another new paragraph to Section 2 that states a director who retires from active employment with the organizational member may continue to serve on the board but only until the end of his term and may not serve as chairman. As with the first proposed change under Article VII, this is impermissible because it would serve as an absolute bar to a retiree serving on the board after the end of his or her current term.

Attachments