

OGC/AMT:bhs
07-0613R

TO: []

FROM: Sheila A. Albin, Associate General Counsel /S/

SUBJ: Proposed Bylaw Amendment – [] Federal Credit Union (FCU)

DATE: June 25, 2007

Under NCUA Delegations of Authority, Supervision 12, you have asked for our concurrence regarding [] FCU's proposed amendment to Article III, Section 1 of its Bylaws. [] FCU proposes different par values for natural person members and members that are legal entities. The proposed amendment is legally permissible if there is a rational basis for the disparate treatment.

You indicate you are inclined to deny the request because you believe the Federal Credit Union Act (the Act) does not allow for the creation of different stock classes. You referred to OGC Op. 98-0713 (December 2, 1998) as support for your view.

Previous OGC opinions have allowed FCUs to create different par values for shares and the staff commentary in the FCU Bylaws issued last year specifically notes that different par values are permissible. FCU Bylaws, pages 5-6. In an opinion last year, we decided a rational basis existed to establish a higher par value of a share for new members than for existing members, subject to applicable federal and state laws. OGC Op. 04-1205 (January 19, 2005) (available on the agency website).

[] FCU proposed the following language: The par value for natural person [sic] of each share will be \$5.00. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$2.00 per month. The par value for entities that are not natural persons will be \$100.00. Subscriptions to shares of entities that are not natural persons will be at least \$40.00 per month.

We recommend the following substantive changes be made: First, the phrase "entities that are not natural persons" should be shortened to "entities." The term "entity" does not include natural persons by definition, therefore the additional language is extraneous and should be removed. Second, a conversation with [] of [] FCU on June 20, 2007, calls for additional language to clarify subscriptions to shares for entities are payable at the time of subscription or installments of at least \$40.00 per month.

Based on the FCU's submission and the conversation with [], the proposed language for Article III, Section I of [] FCU's Bylaws should be changed to read as follows: The par value of each share for natural persons will be \$5.00. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$2.00 per month. The par value of each share for entities will be \$100.00. Subscriptions to shares are payable at the time of subscription, or in installments of at least \$40.00 per month.

Please call Staff Attorney Annette Tapia or me if you have any questions.