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91-0814

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FROM: James J. Engel, Deputy General Counsel

SUBJ: [ ] FCU Nonstandard Bylaw Amendment

Request (Your August 6, 1991 Memorandum)

DATE: September 4, 1991

You requested our comments on a proposed nonstandard bylaw amendment submitted by [ ] (the "FCU"). You indicate that you are inclined to approve the amendment. For the reasons discussed below, we recommend that the proposal not be approved.

### **Analysis**

The FCU proposes to amend Article XIX of its bylaws by adding Section 8, providing for indemnification of the FCU's officials and/or employees. The proposed amendment is based on the version of Article XIX, Section 8 contained in the standard bylaw amendments, with a few changes. In our view, the changes suggested by the FCU only create confusion. We think that the FCU would be better served by adopting the standard amendment.

Under the standard amendment, an FCU must elect whether to indemnify its officials and employees in accordance with state law or with the Model Business Corporation Act ("MBCA"). The FCU states, in its letter to you, that it has proposed the nonstandard amendment because its attorney has determined that the Texas state law is more expansive than the MBCA. That being the case, the simple solution would be for the FCU to elect indemnification "to the extent authorized by the state of [Texas]," as provided by the standard amendment. We fail to see what the FCU hopes to accomplish by changing the standard amendment.

We wish to point out that the FCU's proposal contains certain inconsistencies. First, although the FCU has indicated a desire to provide indemnity to the extent allowed under the Texas Non-Profit Corporation Act ("TNCA"), Section 8(b) of the proposal refers to both "the laws of the State of Texas" and the MBCA. Second, Section 8(b) discusses insurance for "the individuals indicated in (a) above." However, while the standard amendment describes the covered individuals in Section 8(a), Section 8(a) of the proposal omits that information. As drafted, the proposal does not make sense.

Lastly, we note that the proposed amendment refers to "Exhibit A of Amendments of Bylaws" as containing specific information. We assume that Exhibit A sets forth the provisions of the TNCA. The fact that Attachment A is designated "Article XIX, Section 8," creates confusion by suggesting that Attachment A is itself the bylaw. The actual text of the TNCA need not and should not be made a part of the bylaws. If the FCU desires to adopt specific provisions of the TNCA, it may do so by board resolution.

In summary, we believe that the FCU's goal of providing indemnification in accordance with the TNCA can

best and most easily be accomplished by use of the standard bylaw amendment for Article XIX, Section 8. The proposed amendment does not add anything of value and, we believe, creates unnecessary confusion.

One final comment. The standard bylaw amendment was developed so that NCUA would not have to engage in the time-consuming process of reviewing every proposed indemnification bylaw to ensure compliance with state law or the MBCA. For that reason, we have consistently refused to consider proposed nonstandard bylaw amendments in this area. To do otherwise would be to risk opening the door to consideration of numerous similar nonstandard bylaw amendments in the future.