

January 24, 2002

Greg Badovinac, Federal Regulatory Analyst
California Credit Union League
9500 Cleveland Avenue, Suite 200
Rancho Cucamonga, CA 91730-5908

Re: Amending FCU Bylaws to Permit Directors Voting by E-Mail.

Dear Mr. Badovinac:

Your request for a change to the Federal Credit Union (FCU) Bylaws has been referred to this office for a response. You filed your request under §791.8(c) of NCUA's regulations. 12 C.F.R. §791.8(c). That provision governs the procedure for petitioning NCUA to amend its regulations. The FCU Bylaws are not a regulation and so this matter is not being treated as a petition to amend a regulation. As explained below, we suggest an FCU request a bylaw amendment if it wishes to pursue voting by e-mail.

You have suggested amending the FCU Bylaws to permit FCU directors to hold special meetings using e-mail. FCU Bylaws, Article VI, Section 5. Your proposed bylaw amends the last sentence of Section 5 to read "[s]pecial meetings may be conducted using audio or video teleconference methods, including the use of e-mail or other electronic communication." In support of your request, you have provided a letter issued by the Office of Thrift Supervision (OTS) that permits directors to vote on board resolutions by e-mail. This is quite different than permitting a meeting to be conducted by e-mail. OTS regulations permit directors to take action without a board meeting if unanimous consent is obtained for such action. 12 C.F.R. §§544.5(b)(9) and 552.6-1(i). It was in conjunction with this authority that the authority to vote by e-mail was granted.

We cannot recommend approving a bylaw that permits a board meeting to be conducted via e-mail. The limitations of e-mail would preclude the chair from controlling the meeting and complying with general corporate law. The Model Business Corporation Act requires that all directors participating in a meeting simultaneously hear each other during the meeting. Model Business Corporation Act §8.20. In addition, on page two of the May 10, 2001, OTS letter, there are references to similar meeting requirements for the entities OTS regulates.

We suggest that, if an FCU board is interested in voting on matters without a meeting and by e-mail, it should apply to its regional office for a nonstandard bylaw amendment similar to the provisions in the OTS regulations cited above. This office would have no legal objection to a bylaw amendment that permits directors to vote on a board resolution and thereby permit action without a meeting if all the directors consent to the action either in writing or in some other recorded fashion, for example, by e-mail.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/MFR:bhs
SSIC 6100
01-1176

cc: Becky Baker, Secretary of the Board