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FROM: James J. Engel, Deputy General Counsel

SUBJ:

Nonstandard Bylaw Amendment for

DATE: September 13, 1993

You requested our opinion on a proposed nonstandard bylaw amendment submitted by [ ]. The FCU proposes to amend Article X, Section 1 to create staggered three year terms for the supervisory committee members. Although we have no legal objection to the staggering of supervisory committee terms, some of the other changes in the proposed bylaw present problems. Also, the amendment should specify how the initial term staggering will be achieved.

The FCU's proposal would amend Article X, Section 1 to read as follows:

The supervisory committee shall be appointed by the board and shall consist of three members of this credit union. No employee of this credit union may be appointed to the committee. Regular terms of the committee members shall be for a period of three years, with staggered terms to ensure that only one committee member need be appointed each year. if any committee member resigns, or is in any other way unable to fulfill the responsibilities of the committee, the board shall appoint a successor to fulfill only the remainder of the unexpired term.

Staggering of supervisory committee members' terms does not violate either the FCU Act or the Regulations. Moreover, we have previously approved bylaw amendments providing for staggered terms for directors, and we agree with the FCU that staggering the supervisory committee members' terms will provide greater stability. Thus, we have no legal objection to the staggering of terms.

We note, however, that the proposed amendment varies from the standard bylaw in other ways as well. Two of those variations concern us.

First, the proposal deletes the standard bylaw, provision to the effect that no member of the credit committee may be appointed to the supervisory committee. The FCU offers no explanation for this change, and we recommend that the change not be allowed. Although neither the FCU Act nor the Regulations precludes an individual from serving on both the credit committee and the supervisory committee, we believe that such dual service is inconsistent with the supervisory committee's purpose of monitoring management practices and internal controls. We recommend that you not allow the proposed amendment unless the FCU includes the provision barring credit committee members from serving on the supervisory committee.

Second, the proposal deletes the standard bylaw provision stating that supervisory committee members' regular terms expire at the first regular board meeting after the annual meeting. Again, the clause in question is not legally required. However, we recommend that it be included in the bylaw in order to avoid any confusion about when a committee member's term expires.

Finally, we note that the bylaw does not specify how the initial staggering of terms will be achieved. We assume, from the wording of the FCU's letter to your office, that the terms of the current supervisory committee members are due to expire at the same time. It is unclear whether the FCU anticipates extending some of those terms in order to achieve its goal of staggering the terms. We recommend that your Office work with the FCU to devise a plan for achieving the initial staggering of terms. Whatever method of implementation your Office and the FCU agree on should be specified in the bylaw. If you wish to have this Office review the amendment after this change is made, we would be happy to do so.