

August 14, 1991

Nicholas C. Kyrus
Deputy Commissioner
State Corporation Commissions
Bureau of Financial Institutions
Suite Eleven Hundred One
701 East Byrd Street
Richmond, Virginia 23205

Re: Membership Merger Vote at Potomac Yard Federal Credit Union

Dear Mr. Kyrus:

Mr. VanDoren of the AB&W Transit Employees Credit Union has asked that I direct this legal opinion to your office. Mr. VanDoren has asked this office whether a special meeting held by the Potomac Yard Federal Credit Union (FCU) approving a merger with AB&W Employees Transit Employees Credit Union is legally valid. In our opinion, the member's vote to approve the merger is legally sufficient.

BACKGROUND

The facts as we understand them are as follows: The FCU notified its membership of a special meeting to approve a merger between the FCU and AB&W Transit Employees Credit Union. The notice stated that if the member could not attend the special meeting that they could vote by mail ballots. The special meeting was held on March 23, 1991 and only eight members attended the meeting. However, seventy four members sent in mail ballots. The merger was overwhelmingly approved; eighty members approved the merger and two members opposed it. The FCU has a bylaw which states that fifteen members is necessary for a quorum at an annual or special meeting.

ANALYSIS

Section 708.106(a)(1) of NCUA's Rules and Regulation (12 C.F.R. ~708.106(a)(1)) states that members:

Have the right to vote on the merger proposal in person at the annual meeting, if within 60 days after NCUA approval, or at a special meeting to be called within 60 days of such approval, or by mail ballot, received no later than the date and time announced for the annual meeting or the special meeting called for that purpose.

Therefore, the members may approve a merger at a special meeting, annual meeting or by mail ballot. The special meeting was not valid because it lacked a quorum. However, a special meeting is only one of the three methods for the members to approve the merger. The mail ballots received by the credit union, for purposes of voting on the merger, are viewed separately from the special meeting. The FCU's receipt of a majority of mail ballots approving the merger is a legally sufficient method for the members to approve the merger. The FCU's bylaw provision concerning quorum requirements do not affect the mail ballot procedure under Section 708.106 of NCUA's Regulations. Therefore, it is our legal opinion that the membership of the FCU has legally approved the merger.

Sincerely,

James J. Engel
Deputy General Counsel

GC/MM:sg
SSIC 6300
91-0749

cc: E.T. VanDoren
AB&W Transit Employees Credit Union