



NATIONAL CREDIT UNION ADMINISTRATION
Washington, D.C. 20456
April 21, 1988

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3600

Office of General Counsel

Mr. Albert C. Reichelt
SSA Baltimore Federal Credit Union
P.O. Box 7560
Baltimore, Maryland 21207-0560

Re: Member Motions Presented to FCU Board
(Your February 26, 1988, Letter)

Dear Mr. Reichelt:

You have asked these general questions on Federal credit union ("FCU") governance: (1) what motions presented by a member at an annual or special meeting must be put to a membership vote; (2) what binding effect does a member motion have if approved by a majority of members at an annual or special meeting; and (3) what is a board member's liability for carrying out the command of a passed member motion. This is an area the NCUA Board has chosen not to regulate. We can, however, provide our general view of what is required under Federal law:

1) If an FCU member makes a motion for the members to take an action entrusted to them -- e.g., a motion to expel a member -- that motion must be recognized and, if seconded, voted on by the membership. If the motion is approved by the members, it must be given the effect required -- e.g., the person must be expelled. The existing board members bear no liability for carrying out that command.

2) If an FCU member makes a motion for the members to vote to require the board to take an action entrusted solely to the board -- e.g., to pay a specific dividend -- the motion need not be recognized. If recognized, seconded, and approved by the members, the board may consider it a request to take the action voted on.

3) If an FCU member makes a motion for the members to vote to request the board to take an action entrusted to the board -- e.g., to pay dividends other than

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quarterly -- the motion must generally be recognized. Even if approved, however, the request does not diminish the board's statutory responsibility for managing the FCU.

Background

Section 111(a) of the FCU Act [12 U.S.C. Section 1761] provides:

The management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee.

Section 113 [12 U.S.C. Section 1761b] adds: "The board of directors . . . shall have the general direction and control of the affairs of the Federal credit union."

For certain FCU actions, however, a membership vote is permitted or required -- election of FCU board members [12 U.S.C. Section 1761] and, where constituted, of credit committee members [12 U.S.C. Section 1761c]; confirmation of a supervisory committee member's suspension [12 U.S.C. Section 1761d]; expulsion of FCU members [12 U.S.C. Section 1764]. Moreover, an FCU is a cooperative -- one of its primary functions is to foster "cooperative credit." 12 U.S.C. Section 1751.

Motions for Members to Vote on a Matter Entrusted to Them.

The easy question is whether a member motion for the members to vote on some matter statutorily entrusted to them must be recognized. One example is a timely motion to expel a member. Such a motion must be recognized. If the motion is seconded and approved by the members, the person must be expelled.

Motions for Members to Vote on Requiring an FCU Board to Take Action Entrusted to the Board.

In our view, a member resolution purporting to require an FCU board to pay a six percent dividend, for example, would violate Section 113 of the FCU Act providing that the FCU board of directors has responsibility for the "general direction and control of the affairs" of the FCU. This is the position of most states which have addressed this question under their general corporate

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laws and of the SEC in its interpretation of Federal securities law. 17 C.F.R. Section 240.14a-8 (shareholder proposals for action at meetings). Motions for a member vote on such matters need not be recognized; if permitted and approved by the membership, they may be treated as a member recommendation to the FCU board.

Motions for Members to Vote on Recommending an FCU Board Take Action Entrusted to the Board.

The most difficult question is when a member motion for a member vote to recommend FCU board action must be recognized. These questions have generated a substantial amount of controversy under state law and Federal securities law. E.g., Medical Committee for Human Rights v. SEC, 432 F. 2d 659 (D.C. Cir. 1970), cert. dismissed, 404 U.S. 403 (1972). The SEC has provided fairly specific guidance to corporations registered with that agency. 17 C.F.R. Section 240.14a-8.

The emerging rule as to corporations seems to be that, in general, members have a right to be heard on all matters of concern to them as FCU members. See Medical Committee for Human Rights v. SEC, supra. We believe this rule applies at least as much to an FCU which is formed and guided by a "cooperative" spirit.

For example, we believe a member motion for a member vote that an FCU board "consider the payment of dividends other than quarterly" must be recognized; that, if the motion is approved by a majority of members, the board must consider the recommendation; and that its failure to do so can be an issue at the next election of board members.

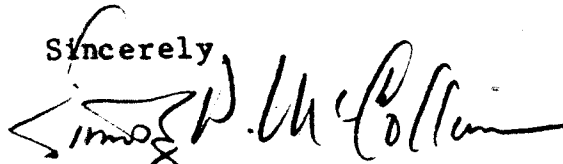
We emphasize that, in our view, an FCU board need only consider a recommendation approved by the members at a membership meeting. It is not bound to adopt such a recommendation as policy; and though a membership recommendation may be considered in determining the reasonableness of a board member's actions in a law

¹ The presiding officer at a member meeting can prevent repetitive and abusive motions, however. See 17 C.F.R. Section 240.14a-8 for a list of occasions when a member motion may be ruled out of order.

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suit, a board member is not thereby relieved of the statutory obligation under Section 113 of the FCU Act to act reasonably in management of the FCU.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy P. McCollum". The signature is written in a cursive style with a large initial "T" and "M".

TIMOTHY P. MCCOLLUM
Assistant General Counsel

TPM:sg