AGENDA DOCUMENT NO. 02-83-A

FEDERAL ELECTION COMMISSION
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December 4, 2002

MEMORANDUM

AGENDA ITEM
For Meeting of: 12-05-02

SUBMITTED LATE

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton LHN (RCS)
General Counsel

Rosemary C. Smith RCS
Acting Associate General Counsel

Mai Dinh MD
Acting Assistant General Counsel

Anne A. Weissenborn AAW
Senior Attorney

SUBJECT: AO 2002-12 – Corrections to draft opinion

On December 3, 2002, this Office received comments on Draft Advisory Opinion 2002-12 from counsel for American Medical Security, Inc. In his comments, counsel noted an incorrect factual statement that appears twice in the draft opinion, once on page 7 and again on page 11, with regard to the selection of members of the AMSG board of directors. He stated that 80% of outstanding shares are required to remove and replace a director, but not to elect one.

This Office recommends the following related changes to the draft opinion at the public session on Thursday, December 5, 2002.

1. On page 7, line 7, insert the following sentence and footnote after "BCBS."

You have stated that new board members are chosen by the other board members.[3]

[3] You have also stated, in your letter of December 3, 2002, that, in the absence of action by the board of directors, board vacancies may be filled "by a plurality of votes cast by shares entitled to vote in an election at a shareholders' meeting at which a quorum [a majority vote of outstanding shares] is present."

2. On page 7, delete line 9, and replace with the following:

required to remove and replace a company director. The votes of 75% of outstanding shares are required to amend the Articles. On

3. On page 11, line 3, add ": (1)" between "that" and "the."

4. On page 11, delete line 4, and replace with the following:

outstanding shares are needed to remove and replace an AMSG director; (2) in the great majority of instances normal vacancies on the board of directors are filled by the board itself; and (3) the approval of 75% of outstanding