

Farm Credit Administration

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(3) The number of shares and par value of equities authorized to be issued for each class of equities. However, the bylaws need not state a number or value limit for these equities:

(i) Equities that are required to be purchased as a condition of obtaining a loan, lease, or related service.

(ii) Non-voting stock resulting from the conversion of voting stock due to repayment of a loan.

(iii) Non-voting equities that are issued to an association's funding bank in conjunction with any agreement for a transfer of capital between the association and the bank.

(iv) Equities resulting from the distribution of earnings.

(4) For Farm Credit Banks, agricultural credit banks (with respect to loans other than to cooperatives), and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which shall be not less than, 2 percent of the loan amount or \$1,000, whichever is less;

(5) For banks for cooperatives and agricultural credit banks (with respect to loans to cooperatives), the percentage or dollar amount of equity or guaranty fund investment (which may be expressed as a range within which the board may from time to time determine the requirement) that serves as a target level of investment in the bank for patronage-sourced business, which shall not be less than, 2 percent of the loan amount or \$1,000, whichever is less;

(6) The manner in which equities will be retired, including a provision stating that equities other than those protected under section 4.9A of the Act are retireable at the sole discretion of the board, provided minimum permanent capital adequacy standards established in subpart H of this part are met;

(7) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be paid, which shall be in accord with cooperative principles; and

(8) For Farm Credit banks, the manner in which the capitalization require-

ments of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

(b) The board of directors of each service corporation (including the Farm Credit Leasing Services Corporation) shall adopt capitalization bylaws, subject to the approval of its voting shareholders, that set forth the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this section to the extent applicable. Such bylaws shall also set forth the manner in which equities will be retired and the manner in which earnings will be distributed.

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997; 63 FR 39227, July 22, 1998; 66 FR 16844, Mar. 28, 2001]

§ 615.5230 Implementation of cooperative principles.

(a) Voting shareholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles.

(1) Voting shareholders of associations and banks for cooperatives shall:

(i) Have only one vote, regardless of the number of shares owned or the number of loans outstanding, except as otherwise required by statute or regulation and except as modified by paragraph (b) of this section;

(ii) Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) Each voting shareholder of a Farm Credit Bank shall:

(i) Have one vote that is assigned a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) Have the right to vote in the election of each director and be allowed to

accumulate such votes and distribute them among the candidates in the shareholder's discretion, except that cumulative voting for directors may be eliminated if 75 percent of the associations that are shareholders of the Farm Credit Bank vote in favor of elimination. In a vote to eliminate cumulative voting, each association shall be accorded one vote.

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy, prior to implementation;

(ii) The bylaw provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote in any shareholder vote to remove each director;

(iii) There are an approximately equal number of voting shareholders in each of the institution's voting regions. The regions shall be deemed to have an approximately equal number of voting shareholders if no region contains more than 25 percent more voting shareholders than in any other region. At least once every 3 years, the institution shall count the number of voting shareholders in each region and, if the regions do not have an approximately equal number of shareholders, shall adjust the regional boundaries to achieve such result; and

(iv) An institution may provide for more than one director to represent a region. In such case, for purposes of determining whether the regions have an approximately equal number of voting shareholders, the number of voting shareholders in the region with more than one director shall be divided by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting shareholders in other regions.

(b) Each equityholder of each institution shall be equitably treated in the operation of the institution.

(1) Each issuance of preferred stock (other than preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially simi-

lar preferences) shall be approved by a majority of the shares of each class of equities affected by the preference, voting as a class, whether or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock and participation certificates shall be on a per share basis and without preference as to rate or priority of payment between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock or participation certificates that result from the conversion of allocated surplus may be subordinated to other classes of common stock and participation certificates in the payment of dividends.

(3) Any patronage refunds that are paid shall be paid in accordance with cooperative principles, on an equitable and nondiscriminatory basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis that will ensure that each patron of the institution receives its fair share of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

(5) Each bank shall endeavor to assure that there is a choice of at least two nominees for each elective office to be filled and that the board represents as nearly as possible all types of agriculture in the district. If fewer than two nominees for each position are named, the efforts of the bank to locate two willing nominees shall be documented in the records of the bank. The bank shall also maintain a list of

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the type or types of agriculture engaged in by each director on its board.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995; 62 FR 4446, Jan. 30, 1997; 62 FR 49908, Sept. 24, 1997; 63 FR 39228, July 22, 1998]

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For perpetual preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative; and

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of

the investment and the terms and conditions under which it is issued.

(3) For term preferred stock:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain, other than the original maturity date, or upon the happening of any event, such as repayment of the loan;

(ii) Retirement must be at not more than book value;

(iii) Dividends may be cumulative, but the board of directors must have the option to defer payment; and

(iv) Disclosure must have been made pursuant to § 615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(c) Once an institution's board of directors has made a determination that the institution's capital position is adequate, the institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) Any such retirements are in accordance with the institution's capital adequacy plan or capital restoration plan;

(2) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(3) The institution meets and maintains all applicable minimum surplus and collateral standards; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors each quarter.

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997]

§ 615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR part 620;

(2) The institution's most recent quarterly report filed under 12 CFR part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms