

Farm Credit Administration

§ 615.5250

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

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and conditions, the description shall disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retirable only at the discretion of the board of directors and only if minimum permanent capital standards established under subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital standards; and

(iv) Whether the institution knows of any reason the institution may not meet its permanent capital standard on the next earnings distribution date.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser need be provided again unless the purchaser requests, except the disclosure required by paragraph (a)(4) of this section.

(c) Other equities. (1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed and cleared by the Farm Credit Administration. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items in (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds. No materials previously provided to the purchaser need be provided again unless the purchaser requests it, except the disclosure required by paragraph (a)(4) of this section and a discussion of the use of sale proceeds.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (c)(1) of this section to the Farm Credit Administration for review and clearance.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) For a class of stock, the FCA may waive any or all of the disclosure requirements of paragraph (c)(1) of this section when each investor acquires at least \$100,000 of the stock if the sophistication of the purchaser warrants, provided that subsequent transfers of the stock in amounts of less than \$100,000 must receive the prior written approval of the FCA.

(d) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions, other financing institutions, or non-Farm Credit System lenders.

[53 FR 40046, Oct. 13, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996; 62 FR 4447, Jan. 30, 1997; 66 FR 16844, Mar. 28, 2001; 68 FR 18534, Apr. 16, 2003]

Subpart J—Retirement of Equities

§ 615.5260 Retirement of eligible borrower stock.

(a) *Definitions.* For the purposes of this subpart the following definitions shall apply:

(1) *Eligible borrowers stock* means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 6, 1988; and