Farm Credit Administration § 615.5250

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 must 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 to locate two willing nominees must be documented in the records of the bank and provided as part of the Annual Meeting Information Statement of part 620, subpart E of this chapter. The bank must also maintain a list of the type or types of agriculture engaged in by each director on its board.

§ 615.5255 Disclosure and review requirements for other equities.

(a) A bank, association, or service corporation must submit a proposed disclosure statement to the Farm Credit Administration (FCA) for review and clearance prior to the proposed sale of any other equities, which for this subpart means equities not purchased as a condition for obtaining a loan.

(b) An institution may not offer to sell other equities until a disclosure statement is reviewed and cleared by FCA.

(c) A disclosure statement must include:

(1) All of the information required by part 620 of this chapter in the annual report to shareholders as of a date within 135 days of the proposed sale. An institution may incorporate by reference its most recent annual report to shareholders and the most recent quarterly report filed with the FCA in satisfaction of this requirement;

(2) The information required by § 615.5250(a)(3) and (a)(4); and

(3) A discussion of the intended use of the sale proceeds.

(d) An institution is not required to provide the materials identified in paragraphs (c)(1) and (c)(2) of this section to a purchaser who previously received them unless the purchaser requests it.

(e) For any class of stock where each purchaser and each subsequent transferee acquires at least $250,000 of the stock and meets the definition of “accredited investor” or “qualified institutional buyer” contained in 17 CFR 230.501 and 230.144A (or successor provisions), a disclosure statement submitted pursuant to this section is deemed reviewed and cleared by FCA and an institution may treat stock that meets all requirements of part 615 as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H of this part unless FCA notifies the institution to the contrary within 30 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by FCA.

(f) For all other issuances, a disclosure statement submitted pursuant to this section is deemed cleared by FCA, and an institution may treat stock that meets all requirements of part 615 as permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H unless FCA notifies the institution to the contrary within 60 days of receipt of a complete disclosure statement submission. A complete disclosure statement submission includes the proposed disclosure statement plus any additional materials requested by FCA.

§ 615.5255 Disclosure and review requirements for other equities.