

experience of the other GSEs engaged in global debt marketing programs also suggests that using international clearing systems is an acceptable business practice.

Nevertheless, the FCA believes that the operational risk inherent in the development of a global debt program is significant enough to warrant the requirement that the Funding Corporation Board of Directors approve each prospective global agent and clearing system. Additionally, the Funding Corporation must establish appropriate selection criteria for global agents. The FCA expects that selection criteria will be based on factors such as credit ratings, capital, reputation, experience, and management capabilities to ensure that the entity is suitable to assume and carry out the functions of a fiscal agent, including the appointment of subordinate agents if necessary.<sup>12</sup>

Promulgation of new subpart P of 12 CFR part 615 effectively approves the first two aspects of the proposed Program as previously outlined. Thus, the Funding Corporation may engage global agent(s) to issue and service dollar denominated global debt securities and facilitate their secondary market trading in foreign capital markets by using international clearing systems.

The FCA has decided that the third aspect of the proposed Program—issuance of non-dollar denominated Systemwide debt securities—presents issues that need to be addressed through conventional notice-and-comment rulemaking rather than in the present expedited rulemaking. The Act does not restrict the issuance of Systemwide debt securities to dollar denominated securities. However, issuance of non-dollar debt obligations could raise safety and soundness concerns for the banks, including currency and counterparty risks. The FCA, therefore, intends to explore these potential safety and soundness issues through an Advance Notice of Proposed Rulemaking prior to developing regulations.

#### V. Expedited Rulemaking Procedure

The Act permits the Funding Corporation to market debt securities on a global basis and use global agents to issue and service such securities.

<sup>12</sup> Depending upon the agreement between the Funding Corporation and the entity acting as global agent, a global agent may only retain primary responsibility over certain fiscal functions and thus may need to appoint other agents, such as paying agent, transfer agent, calculation agent, exchange agent, or register agent to perform other functions necessary for clearance and settlement of transactions.

Moreover, marketing and issuance of dollar denominated debt by GSEs is an established practice that appears to present minimal safety and soundness risk. Accordingly, the FCA finds that pre-promulgation notice and comment on a new subpart P that merely clarifies existing authority is unnecessary and is not in the public interest.<sup>13</sup> Thus, this regulation shall take effect as a final regulation in accordance with section 5.17(c)(1) of the Act, upon the expiration of 30 days after publication in the Federal Register, during which either or both Houses of Congress are in session. The FCA solicits and will consider comments on whether the requirements of new subpart P need further clarification.

#### List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

#### **PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

2. Subpart P is added to read as follows:

#### **Subpart P—Global Debt Securities**

##### **§ 615.5500 Definitions.**

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation

to facilitate the sale of global debt securities.

##### **§ 615.5502 Issuance of global debt securities.**

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.  
[FR Doc. 95-28584 Filed 11-22-95; 8:45 am]

BILLING CODE 6705-01-P

#### **12 CFR Parts 615 and 620**

RIN 3052-AB60

#### **Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Disclosure to Shareholders; Director Elections**

AGENCY: Farm Credit Administration.

ACTION: Final rule.

**SUMMARY:** The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts amendments to the regulations relating to the implementation of cooperative principles to allow greater flexibility in the method by which directors of Farm Credit System (System) associations and banks for cooperatives are elected, consistent with cooperative principles. The amendments permit regional election of directors.

**EFFECTIVE DATE:** The regulations shall become effective upon the expiration of 30 days after publication during which either or both houses of Congress are in session. Notice of the effective date will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** John J. Hays, Policy Analyst, Regulation Development, Office of Examination, (703) 883-4498, TDD (703) 883-4444; or Rebecca S. Orlich, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On June 9, 1995, the FCA Board published proposed amendments to its regulations governing the election of directors. See 60 FR 30470 (June 9, 1995). The FCA received 9 comment letters in response

<sup>13</sup> See 5 U.S.C. 553(b)(B).

to this proposal. A description of the existing and proposed regulations, comments on major issues, and the FCA's response follow.

### I. Existing Regulation and Proposed Regulation

The existing regulation was promulgated by the FCA in 1988 to implement changes effected by the Agricultural Credit Act of 1987. It provided for the at-large election of directors of associations and banks for cooperatives (BCs) but permitted associations that, in 1988, had bylaws providing for regional elections of directors to continue to do so until January 1, 1993. These associations were districtwide associations that had been formed in the 1980s through mergers of most or all of the associations in a bank's district. In response to the desire for regional representation expressed in the comments to the existing regulations when they were proposed in 1988, the FCA placed no restrictions on the institution's ability to provide for geographic representation on the board by geographic designation of director positions; the Agency also provided for cumulative voting unless shareholders approved bylaws providing otherwise. However, the FCA decided to prohibit regional voting because of Agency concerns regarding director accountability and equitable voting power.

Subsequent to implementation of that regulation, and in response to requests from institutions to permit regional election of directors, the FCA reviewed its position and determined that its concerns could be addressed in a less burdensome way that would permit regional elections, consistent with cooperative principles.

The FCA proposed amendments to § 615.5230(a)(1)(ii) to permit the regional election of directors of associations and BCs subject to the following conditions:

1. To ensure that a director can be held accountable by all shareholders, institutions with bylaws providing for shareholder removal of directors must provide that each director may be removed by a majority vote of all voting shareholders and may not be removed by a vote of only the shareholders in his or her region; and

2. The bylaws provide for the apportionment of the institution's territory into voting regions with approximately equal numbers of voting shareholders and ensure equitable representation from each voting region through an annual evaluation by the institution's board of directors.

The FCA also proposed a conforming amendment to § 620.21(d)(1) of the FCA regulations to require disclosures regarding regional voting in the association's annual information statement.

### II. Comments on Major Issues

Comments were received from the Farm Credit Council (FCC), representing the interests of its membership except for one bank; a Farm Credit Bank; five System associations; a law firm representing two pairs of jointly managed System associations (four associations); and one System association board member. The Farm Credit Bank stated its belief that it was not appropriate for a bank to express a position on the regulation of the internal affairs of associations. Two commenters fully supported the proposal, one commenter objected to the proposal, and others expressed varying degrees of support and/or criticism as described below:

1. *Shareholder approval of bylaw establishing regional elections.* An association objected to this requirement as being burdensome and costly, and a responsibility for association boards. The FCC stated that it strongly opposed this provision as being unnecessary, a matter for the association board to decide, prohibitively expensive for some associations, and a barrier to having regional elections before 1997.

2. *"Approximately equal number of voting shareholders" in each region.* This issue was commented on by the FCC and five others. The FCC asserted that, as a practical matter, this requirement would preclude the drawing of regional boundaries along state, county, or other political or geographic lines. The FCC asserted that it would likely result in the elimination or curtailment of certain "grass roots" programs, because regions based on equal numbers of shareholders would mean that some regions will be very large and the large size would make travel to the local meetings difficult, if not impossible. The FCC further stated that the number of shareholders per region should not be the controlling factor, or even necessarily of greater weight than other factors.

One association supported additional flexibility on this issue and asked for "board variance to the percent of stockholders located in each region in order to achieve clear understanding of each regions' boundaries." The law firm recommended that association boards be permitted to draw boundaries along county or territorial lines "consistent with standards provided in the bylaw to assure 'substantial parity' of voting

control among shareholders across regions but without requiring coupling of non-contiguous counties into a single region." The comment does not suggest what the standard for "substantial parity" would or should be, other than that it must be provided for in the bylaws. Another association stated that "regions with disproportionate numbers of stockholders can be equitably served by differential numbers of director positions per region, resulting in reasonably balanced representation of stockholders per director." An association also suggested that "approximately equal" be defined to mean a shareholder variance of 10 percent more or less than other regions. Another association expressly supported the "approximately equal" standard.

3. *Annual evaluation to assure that regions remain approximately equal.* The FCC and three associations were critical of the annual evaluation requirement. The FCC pointed out that, since many or most associations elect directors on a staggered-term basis, the voting region electing a particular director could change while he or she is in office; it also said that an annual evaluation could result in frequent changes in regional boundaries. The law firm made a similar comment and stated that, "[t]o the extent there is now any sense of connection between a stockholder and a director from his or her region, it would certainly be lost in this shuffle." One association stated its belief that evaluations should be necessary only every 3 years. Two associations expressly supported the proposed annual evaluation.

### III. FCA's Response to Comments

On the issue of shareholder approval to determine the method of electing their directors, the Board strongly believes that the right of shareholders to vote for all of the directors who owe them fiduciary duties should not be limited in any way without their consent. A regional voting bylaw, if adopted with the approval of only directors of the institution, could be viewed as serving primarily the interest of furthering director position and influence and disenfranchising shareholders. Shareholder ratification will serve to negate any such inference and assure concurrence by the owners of the association as to the benefits to be derived from the bylaw provision. The Board recognizes that there are costs associated with any shareholder vote but does not believe that the cost would be prohibitively expensive for any institution, as was asserted by a commenter. Therefore, after weighing

the costs and benefits, the Board adopts the shareholder approval requirement as proposed.

In response to comments regarding the requirement to have an "approximately equal" number of voting shareholders per region, the Board has carefully considered the arguments against such standard. The Board has concluded that the equalization of the number of voters per region ensures democratic control of an association. The Board is not persuaded that "approximately equal" voting would reduce or curtail grass-roots participation in institution business, particularly since at present the directors are elected on an at-large basis.

However, in response to some of the comments received asserting that precise equalization would be overly burdensome, the Board has made several changes to this provision of the proposed regulations. First, the final regulation retains the "approximately equal" standard but specifies that the standard is met if no region contains more than 25 percent more voting shareholders than in any other region. After implementation, the institution must periodically count the number of voting shareholders in each region and, if the "approximately equal" standard is no longer being met, must adjust the boundaries or adjust the ratio of borrowers to directors in order to meet the standard. Second, the final regulation provides that the evaluation of the number of voting shareholders and any resulting adjustments must take place at least once every 3 years. This is a relaxation of the proposed regulation's requirement for an evaluation every year.

The Board is aware, as some commenters noted, that revisions of the regional boundaries, in cases where board members serve staggered terms, could be viewed as depriving some shareholders of representation who may, after a boundary change, be in the region of a board member for whom they did not have the opportunity to vote. Such a result would appear to be unacceptable in a situation where a board member is obligated to represent only the interests of shareholders from his or her region. However, that is not the case here. Institution board members have a fiduciary duty to represent the interests of *all* of the shareholders in the institution's territory, even when they are elected on a regional basis.<sup>1</sup> An

<sup>1</sup> Moreover, the combination of yearly boundary revisions and directors with staggered terms may not be uncommon among cooperatives. See, e.g., the model bylaw provision set forth in *Legal Phases of Farmer Cooperatives*, Information 100, Farmer

institution may, of course, choose to elect all of its directors annually, or may decide not to have regional voting.

The Board has also made several clarifications to the proposed regulations. Proposed § 615.5230(a)(3)(ii) stated that, if there is a bylaw providing for shareholder removal of directors, it must give all voting shareholders the right to vote to remove a director and not limit the right to the shareholders in the director's region. In the Board's view, this language implied that the bylaws could deprive shareholders of the right to remove directors. It was not the intention of the Board to imply this, since stockholders have a common law right to remove directors for cause.<sup>2</sup> Therefore, to avoid any confusion on this issue, the Board has revised the proposal to provide, in the final regulations, that bylaws establishing regional voting must give all voting shareholders the right to vote in any shareholder vote to remove a director.

The Board has also added a clarifying amendment to § 620.21(d)(3). The existing regulation requires that, if an association's annual meeting is held in more than one session, the annual meeting information statement must contain a statement that nominations from the floor must be made at the first session. The clarifying amendment adds that, for associations that elect directors by region, there must be a statement that nominations from the floor for a director from a particular region must be made at the first session in that region if stockholders do not vote solely by mail ballot. If stockholders vote solely by mail ballot, the information statement must state that nominations from the floor may be made at any session of the annual meeting held in a region, unless the bylaws provide otherwise.

No specific comments were received on regional elections for BC directors or on the proposed conforming amendment to § 620.21(d)(1), the disclosure regulation. The disclosure provision is adopted as proposed.

#### List of Subjects

##### 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

Cooperative Service, U.S. Dept. of Agriculture (1976), at 572-73.

<sup>2</sup> See Harry G. Henn & John R. Alexander, *Laws of Corporations* § 205 (1983). Common law also provides that the board of directors may not remove a director for cause unless the bylaws so state; it appears that the board of directors cannot remove a director without cause. *Id.*

##### 12 CFR Part 620

Accounting, Agriculture, Banks, banking, Reporting and recording requirements, Rural areas.

For the reasons stated in the preamble, parts 615 and 620 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

#### **PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608.

#### **Subpart I—Issuance of Equities**

2. Section 615.5230 is amended by adding a new paragraph (a)(1)(iii) and revising paragraphs (a)(1)(ii) and (a)(3) to read as follows:

#### **§ 615.5230 Implementation of cooperative principles.**

- (a) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(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) \* \* \*

(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.

\* \* \* \* \*

**PART 620—DISCLOSURE TO SHAREHOLDERS**

3. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa-11); sec. 424 of Pub. L. 100-233, 101 Stat. 1568, 1656.

**Subpart D—Association Annual Meeting Information Statement**

4. Section 620.21 is amended by adding the words "or elected" after the word "nominated" in the first sentence of paragraph (d)(1); and by revising paragraph (d)(3) to read as follows:

**§ 620.21 Contents of the information statement and other information to be furnished in connection with the annual meeting.**

\* \* \* \* \*

(d) \* \* \*

\* \* \* \* \*

(3) State that nominations shall be accepted from the floor.

(i) If directors are not elected by region, the following shall apply:

(A) If the annual meeting is to be held in more than one session and mail balloting will be conducted upon the conclusion of all sessions, state that nominations from the floor may be made at any session or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions, state that nominations from

the floor may be made only at the first session.

(ii) If directors are elected by region, the following shall apply:

(A) If more than one session of an annual meeting is held in a region, and if mail balloting will be conducted at the end of all sessions in a region, state that nominations from the floor may be made at any session in the region or, if the association's bylaws so provide, state that nominations from the floor shall be accepted only at the first session held in the region.

(B) If shareholders will not vote solely by mail ballot upon conclusion of all sessions in a region, state that nominations from the floor may be made only at the first session held in the region.

\* \* \* \* \*

Dated: November 17, 1995.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 95-28587 Filed 11-22-95; 8:45 am]

BILLING CODE 6705-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 23**

[Docket No. 128CE, Special Condition 23-ACE-83]

**Special Conditions; Beech Model 58 Airplanes**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Beech Model 58 airplanes modified by ElectroSonics Division of AiRadio Corporation, Columbus, Ohio. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: The effective date of these special conditions is on

publication in the Federal Register. Comments must be received on or before December 26, 1995.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 128CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 128CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-6941.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety, and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on these special conditions.

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 128CE." The postcard will be date stamped and returned to the commenter.

**Background**

On September 25, 1995, ElectroSonics Division of AiRadio Corporation, P.O. Box 360436, Columbus International Airport, Columbus, Ohio 43236, made an application to the FAA for a supplemental type certificate (STC) for the Beech Model 58 airplanes. The