

transit across Mexico and the United States.

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Done in Washington, DC, this 16th day of October 2002 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-26811 Filed 10-21-02; 8:45 am]

BILLING CODE 3410-34-P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy

AGENCY: Farm Credit Administration (FCA).

ACTION: Proposed rule.

SUMMARY: The FCA proposes to amend its capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation; limit the amount of term preferred stock that may count as total surplus; clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System (FCS, Farm Credit or System) institution; and make several nonsubstantive technical changes. These amendments will update, modify, and clarify certain capital requirements.

DATES: Please send your comments to us by November 21, 2002.

ADDRESSES: You may send comments by electronic mail to reg-comm@fca.gov or through the Pending Regulations section of FCA's Web site, <http://www.fca.gov>. You may also send comments to Thomas G. McKenzie, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090 or by fax to (703) 734-5784. You may review copies of all comments we receive in the Office of Policy and Analysis, FCA.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4479; TTY (703) 883-4434; or Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposal are to:

- Limit the effect of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133), on the net collateral ratio;
- Ensure that Farm Credit institutions do not overly rely on term preferred stock to meet regulatory capital requirements;
- Explain how the FCA may include other debt or equity in the definition of permanent capital;
- Clarify the requirements for the FCA to consider waiving disclosure requirements for issuances of stock to more than a single sophisticated investor; and
- Make several nonsubstantive technical changes to our capital regulations.

II. Introduction

The FCA is proposing changes to the capital adequacy regulations in order to update, modify, and clarify certain requirements. We propose revising the net collateral ratio calculation to limit the effect of new accounting rules for derivatives. This is in response to a petition we received last year from two System banks. We also propose limiting the amount of term preferred stock that can be counted in total surplus.

Additionally, we propose excluding term preferred stock from liabilities in the calculation of the net collateral ratio for System banks to the extent that the stock is counted as total surplus. This latter proposed amendment reflects the capital treatment of term preferred stock issuances we recently reviewed for two System banks. As a result of our review of those recent stock issuances, we also identified a need to clarify certain requirements and make additional technical corrections. The proposed amendments are more fully described in the section-by-section analysis below.

III. Section-by-Section Analysis

Section 615.5201(e)—Definition of Direct Lender Institution

We propose amending § 615.5201(e) by removing the phrase "loan of lease" and adding, in its place, the phrase "loan or lease" to correct a typographical error.

Section 615.5201(l)—Definition of Permanent Capital

We propose adding a new paragraph (8) to the definition of permanent capital in § 615.5201(l). This proposed amendment reflects a statutory change to section 4.3A of the Farm Credit Act of 1971, as amended, by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The

1992 Act added section 4.3A(a)(1)(E), which includes in permanent capital any debt or equity instrument or other account that the FCA determines appropriate to be considered as permanent capital. The proposed amendment states that we may include a debt or equity instrument in permanent capital in whole or in part, and on a permanent or temporary basis. The language of this proposal is similar to language in existing § 615.5301(b)(1)(iv) and (i)(5), which states that we may include additional items in core or total surplus when we deem their inclusion to be appropriate. The inclusion of additional items would give institutions more flexibility in meeting their capital requirements.

We considered proposing that term subordinated debt could be counted as permanent capital in much the same way that we currently allow term preferred stock to be counted. However, since no System institution has issued subordinated debt, we have decided to consider the inclusion of subordinated debt in permanent capital on a case-by-case basis, should we receive a specific proposal by a System institution.

Section 615.5250(c)(5)—Waiver of Disclosure Requirements

We propose amending § 615.5250(c)(5) to clarify the circumstances in which we may waive any or all of the disclosures we require institutions to make to potential investors in stock issuances. The existing waiver language has been interpreted by some institutions to apply only when a single investor acquires all the equities of an entire class issued by an institution. Our revision clarifies that we may waive disclosure requirements when the following conditions are met: (1) Equities are sold only to sophisticated investors; (2) equities are sold in blocks of \$100,000 or more; and (3) purchasers of equities agree that any subsequent sale or transfer must be in blocks of \$100,000 or more. Any subsequent sale or transfer of equities that is less than \$100,000 must receive our prior written approval.

We also propose to correct the reference to paragraph (b) in existing paragraph (c)(5). The reference should be to the disclosure requirements in paragraph (c)(1).

Section 615.5301(i)—Definition of Total Surplus

We propose to add a new paragraph (4) to the definition of total surplus in § 615.5301(i) to limit the amount of term preferred stock that may be included in total surplus to 25 percent of permanent

capital. Conforming changes are proposed to paragraph (3).

Our existing regulations include term preferred stock in total surplus without limit. We are proposing a limitation equal to 25 percent of permanent capital, to ensure that System institutions do not overly rely on this type of capital in their operations. This limitation is generally comparable to the treatment of intermediate-term preferred stock in the regulatory capital requirements for commercial banks. Commercial banks' Federal financial regulators exclude term preferred stock from Tier 1 capital and limit the amount of intermediate-term preferred stock that can count as Tier 2 capital to an amount equal to 50 percent of Tier 1 capital.¹ In addition, the amount a commercial bank may count as Tier 2 capital can be no greater than its Tier 1 capital. This means, in effect, that no more than 25 percent of a commercial bank's minimum total regulatory (Tier 1 + Tier 2) capital may consist of term preferred stock.² We believe a similar limit to that imposed on commercial banks is also appropriate for System institutions and, therefore, are proposing a limitation on the total surplus ratio.

We note that the proposal would not prohibit System institutions from issuing preferred stock in excess of what may be counted as total surplus, but such excess amounts would not qualify as total surplus. The preferred stock would, however, be treated as permanent capital to the extent permitted in the permanent capital calculation.

New Section 615.5301(j)—Definition of Total Liabilities

In May 2001, two System banks petitioned us to revise the net collateral ratio calculation requirements in § 615.5301 in response to the new accounting requirements for derivatives in SFAS 133, as promulgated by the Financial Accounting Standards Board (FASB). The banks asserted that the accounting changes imposed by SFAS 133 reduced their net collateral ratios in a way they believe was unintended.

In response to the banks' petition, we are proposing a new § 615.5301(j) to define "total liabilities" for the purpose of calculating the net collateral ratio. The net collateral ratio is a bank's net collateral, as defined in § 615.5301(c),

¹ See 12 CFR part 325, app. A (I.A.2(d)) (Federal Deposit Insurance Corporation); 12 CFR part 3, app. A (2(b)(4)) (Comptroller of the Currency); and 12 CFR part 208, app. A (II.A.2(iv)) (Board of Governors of the Federal Reserve System).

² This example assumes that a commercial bank has Tier 2 capital equal in amount to its Tier 1 capital.

divided by the bank's total liabilities. Proposed § 615.5301(j)(1) specifies that total liabilities are valued in accordance with generally accepted accounting principles (GAAP), with the following exclusions for the effects of SFAS 133: (1) Adjustments to the carrying amount³ of any liability that is designated as being hedged; and (2) any derivative recognized as a liability that is designated as a hedging instrument.

Prior to SFAS 133, GAAP allowed many derivative instruments to be treated by System banks as off-balance sheet items. However, with the adoption of SFAS 133, System banks must now recognize all derivative instruments at their fair value as either an asset or a liability on the balance sheet. If a derivative instrument qualifies as a designated hedge,⁴ System banks may be required to adjust the carrying value of certain assets or liabilities.

As a result of SFAS 133, System banks that use derivatives may have to recognize an increase in the amount of total liabilities when calculating their net collateral ratios. These increases in total liabilities have resulted in lower net collateral ratios than what the banks would have had under the previous accounting requirements for derivative instruments.

Under SFAS 133, a System bank's total liabilities will often increase for a derivative instrument designated as hedged. This resulting increase in the bank's liabilities from a derivative instrument designated as a hedge has no offsetting equivalent increase in the collateral amount used in the computation of its net collateral ratio because of the way net collateral is defined in § 615.5301(c). Thus, a derivative instrument used by a bank to hedge against interest rate risk can often result in an unintended decline in the bank's net collateral ratio.

We believe a bank's net collateral ratio should not be negatively affected by derivative instruments appropriately used to hedge against interest rate risk or other types of market risks. Appropriate use of derivatives as hedges protects System banks against a true economic decline in their net collateral.

³ GAAP define the carrying amount of a liability as the face amount of a liability increased or decreased by any applicable accrued interest payable and any applicable unamortized premium, discount, finance charges, or issue costs.

⁴ Under SFAS 133, derivative instruments designated as hedges routinely reduce an entity's exposure to changes in the fair value of an asset or liability (*i.e.*, fair value hedge) or changes in expected future cash flows (*i.e.*, cash flow hedge) attributable to a particular risk. For Farm Credit banks, derivative instruments are routinely used to reduce their exposure to (hedge against) changes in market interest rates.

Accordingly, our proposed amendments would exclude the effect of SFAS 133 on the calculation of the net collateral ratio for derivative instruments that qualify as hedges under SFAS 133.

Conversely, we believe derivative instruments that are not designated to hedge specific assets or liabilities do not provide adequate protections for interest rate or other market risks. Therefore, our definition of total liabilities *includes* derivative instruments that do not qualify as designated hedges.

Proposed § 615.5301(j)(2) would also exclude from total liabilities the amount of term preferred stock that is eligible to be counted as total surplus in the numerator of a bank's calculation of its total surplus ratio. In the absence of such exclusion, our existing rule could require certain forms of term preferred stock to be considered liabilities. The proposed exclusion would eliminate the potential inconsistency of treating a particular balance sheet item as a liability for net collateral purposes but as capital for the total surplus ratio.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

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

For the reasons stated in the preamble, we propose to amend part 615 of chapter VI, title 12 of the Code of Federal Regulations 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, 8.3, 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-3, 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 H—Capital Adequacy

2. Amend § 615.5201 as follows:
- Remove the words “loan of lease” in paragraph (e) and add in their place, the words “loan or lease”; and
 - Add a new paragraph (l)(8).

§ 615.5201 Definitions.

- (l) * * *
- (8) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

* * * * *

Subpart I—Issuance of Equities

3. Amend § 615.5250 by revising paragraph (c)(5) to read as follows:

§ 615.5250 Disclosure requirements.

- (c) * * *
- (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.

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Subpart K—Surplus and Collateral Requirements

4. Amend § 615.5301 as follows:
- Redesignate paragraphs (i)(4) through (i)(7) as paragraphs (i)(5) through (i)(8);
 - Remove the reference “§ 615.5201(j)(4)(iv)” in paragraph (i)(2) and add in its place, the reference “§ 615.5201(l)(4)(iv)”;
 - Revise paragraph (i)(3);
 - Add a new paragraph (i)(4); and
 - Add a new paragraph (j).

§ 615.5301 Definitions.

- (i) * * *
- (3) Common and perpetual preferred stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock;
- (4) Term preferred stock that is not purchased or held as a condition of obtaining a loan, up to a maximum of 25 percent of the institution’s

permanent capital (as calculated after deductions required in the permanent capital ratio computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument;

* * * * *

(j) *Total liabilities* means liabilities valued in accordance with generally accepted accounting principles (GAAP), except that total liabilities shall exclude the following:

(1) As set forth in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as promulgated by the Financial Accounting Standards Board—

(i) Adjustments to the carrying amount of any liability designated as being hedged; and

(ii) Any derivative recognized as a liability that is designated as a hedging instrument.

(2) Term preferred stock to the extent such stock is included as total surplus in the computation of the bank’s total surplus ratio pursuant to § 615.5301(i).

Dated: October 16, 2002.

Jeanette C. Brinkley,
Acting Secretary, Farm Credit Administration Board.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375 and 388

[Docket No. RM02-4, PL02-1-000]

Critical Energy Infrastructure Information

October 9, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: On September 5, 2002, the Commission issued a notice of proposed rulemaking to revise its regulations to restrict public availability of critical energy (67 FR 57994, September 13, 2002) date for filing comments is being extended at the request of American Rivers and members of the Hydropower Reform Coalition.

DATES: Comments are due on or before November 14, 2002.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Carol C. Johnson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8521.

SUPPLEMENTARY INFORMATION:

Policy Statement on the Treatment of Previously Public Documents; Notice of Extension of Time

On October 8, 2002, American Rivers and members of the Hydropower Reform Coalition (HRC) filed a request for a 30-day extension of time to file comments in response to the Commission’s Notice of Proposed Rulemaking issued September 5, 2002 and published in the **Federal Register** on September 13, 2002 in Docket Nos. RM02-4-000 and PL02-1-000. The request states that the issues addressed in the NOPR are of significant importance to the HRC, and notes that the HRC is the largest cooperative public interest entity in the hydropower licensing field, and its members are working on approximately 75% of the Commission’s open licensing cases. According to the request, additional time is needed to consult with other concerned organizations and to permit the HRC to prepare meaningful comments on the NOPR.

Upon consideration, notice is hereby given that an extension of time for filing responses to the Commission’s September 5, 2002, NOPR is granted to and including November 14, 2002, as requested by the HRC.

Magalie R. Salas,

Secretary.

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DEPARTMENT OF HEALTH SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. 02N-0370]

Neurological Devices; Classification of Human Dura Mater

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to classify human dura mater intended to repair defects in human dura mater into class II (special controls). The agency is publishing the recommendations of