

§ 615.5240

12 CFR Ch. VI (1-1-08 Edition)

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.

[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; 70 FR 53908, Sept. 13, 2005; 71 FR 5763, Feb. 2, 2006]

§ 615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the 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) Retirement must be solely at the discretion of the board of directors and not upon a date certain (other than the original maturity date of preferred stock) or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

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

(3) The institution must have made the disclosures required by this subpart;

(4) For common stock and participation certificates, dividends must be noncumulative and payable only at the discretion of the board; and

(5) For cumulative preferred stock, the board of directors must have discretion to defer payment of dividends.

[70 FR 53908, Sept. 13, 2005]

§ 615.5245 Limitations on association preferred stock.

(a) The board of directors of each association offering preferred stock must adopt a policy that addresses the association's conditions or limits on the amount of preferred stock that any one holder, or small number of holders may acquire.

(b) Each association offering preferred stock must make the stock available for purchase to each of its members on the same basis.

(c) An association may not extend credit for purchases of preferred stock in the association.

[70 FR 53908, Sept. 13, 2005]

§ 615.5250 Disclosure requirements for borrower stock.

(a) For sales of borrower stock, which for this subpart means equities purchased as a condition for obtaining a

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loan, an institution must provide a prospective borrower with the following documents prior to loan closing:

(1) The institution's most recent annual report filed under part 620 of this chapter;

(2) The institution's most recent quarterly report filed under part 620 of this chapter, 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 and conditions, the description must disclose:

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

(ii) That the equity is retireable 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;

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

(v) The rights, if any, to share in patronage distributions.

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

[70 FR 53908, Sept. 13, 2005]

§ 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 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.