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FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052-AB80

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: In this final rule, we amend the Farm Credit Administration regulation currently entitled "Additional investments of Farm Credit Banks." We remove the requirement that Farm Credit Banks and agricultural credit banks (collectively referred to as banks) obtain our prior approval before making certain transfers of capital to affiliated associations. Instead, we require banks to take into account certain considerations, and to notify bank shareholders and us, before making such transfers. This amendment benefits banks and their associations because it provides clear guidelines and streamlined procedures for banks to follow when they wish to transfer capital to associations. It also enables them to transfer the capital in a more timely manner.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1999, we proposed an amendment to § 615.5171, which implements the authority of banks to purchase nonvoting stock in and to pay in surplus to affiliated associations (64 FR 8018). In the proposed amendment, we termed such purchases and payments "financial assistance." We proposed replacing the requirement that banks obtain our prior approval before providing financial assistance to affiliated associations with a prior notification requirement. In addition, we defined and provided examples of financial assistance, set forth various considerations that banks must take into account before providing financial assistance, and required banks to notify their shareholders within a reasonable time of providing the assistance. We proposed this amendment as part of our commitment to keep regulatory prior approvals in our regulations only when the Farm Credit Act of 1971, as amended (Act), requires them or when safety and soundness concerns exist.

We received two comments on the proposed amendment. One comment was from the Farm Credit Council (Council), representing its member banks and associations, and the other comment was from CoBank, ACB (CoBank). Both commenters generally supported the proposed amendment, although they both suggested some changes. We considered these comments in making changes to our final rule.

II. Scope of Rule

We change the title of this final regulation to "Transfers of capital from banks to associations." In the rule text, we clarify that the rule applies to "preferential transfers of capital" and "nonroutine transfers of capital." We make these changes from the proposed amendment, which covered "financial assistance," in response to the Council's concern that the term "financial assistance" appears limited to transfers made to assist distressed associations. These changes confirm that the rule applies to all transfers of capital that are preferential or nonroutine, not just to transfers made to assist distressed associations.

III. Definitions in this Regulation

In our proposed amendment, we provided examples of the transfers of capital that the rule covers. The final rule includes these examples and adds definitions of the terms "transfer of capital," "preferential transfer of capital," and "nonroutine transfer of capital."

A. Transfer of Capital

We define "transfer of capital" as any payment or forbearance by a bank to an affiliated association. We add this definition to clarify that the term is not limited to the examples of transfers listed in the regulation. These examples include:

- The purchase of nonvoting stock or participation certificates;
- The payment of cash;
- Debt forgiveness or reduction;
- Interest rate concessions or interest-free loans;
- The transfer of loans at other than fair market value;
- The reduction or elimination of standard loan servicing or other fees; and
- The assumption of operating or other expenses, such as legal fees or insurance premiums.

B. Preferential Transfer of Capital

We define "preferential transfer of capital" as a transfer of capital that is not available to all "similarly situated" affiliated associations. We add this definition in response to a comment by the Council. The Council recommended the term "similarly situated" to recognize that the rule does not apply if a bank treats associations differently based on differences in size, asset quality, management, financial performance, and the like, provided that the different treatment has a rational basis. The rule does apply if a bank treats associations differently when those associations are of similar size, asset quality, management, and financial performance. For example, the rule would apply if a bank made an interest rate concession to one association but not to other associations that were similarly situated.

C. Nonroutine Transfer of Capital

We define "nonroutine transfer of capital" as a transfer of capital that is not available in the ordinary course of business. We add this definition in

response to the Council's concern that, without a definition, the rule might be construed to cover transfers made in the ordinary course of business. This definition clarifies that transfers in the ordinary course of business are not subject to this regulation. Transfers in the ordinary course of business may include bank payment of dividends or patronage, normal adjustments to interest rates, bank equalization of purchased equities, and other similar transfers. Routine transfers are often, but not always, addressed in bylaws, General Financing Agreements, loan participation agreements, and loan servicing agreements.

In the preamble to our proposed amendment, we noted that we would consider loss-sharing agreement transfers to be subject to this rule. The Council expressed concern that we would consider transfers made under "endorsement liability" agreements also to be subject to this rule. The Council pointed out that banks and associations make transfers under these agreements, which allocate risks and benefits associated with specific assets, in the ordinary course of business. We agree, and clarify that the rule covers only those loss-sharing agreement transfers that are based on the troubled financial condition of the association receiving the transfer. Banks make transfers under these latter agreements infrequently, and therefore, these transfers are nonroutine.

IV. Considerations for Preferential or Nonroutine Transfers

In our final regulation, we require that, before authorizing a preferential or nonroutine transfer of capital, a bank's board of directors must take into account and document the following considerations:

- Whether the transfer is in the best interests of all of the bank's shareholders;
- Whether the bank will be able to achieve its capital adequacy and business plan goals after making the transfer; and
- Whether the transfer is the "least cost" alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

These considerations contain changes, made in response to comments from the Council, from our proposed amendment.

The Council provided both general comments on the applicability of the considerations and specific comments on individual considerations. In its general comments, the Council agreed that the first and second considerations

are relevant, and should apply, to all preferential or nonroutine transfers. The Council asserted, however, that the third consideration is relevant, and should apply, only to transfers made to assist distressed associations. We believe, however, that all three of these considerations are relevant to most preferential or nonroutine transfers. In fact, under the current prior approval regulation, we have applied the third consideration in approving transfers to nondistressed associations.

Accordingly, in the final rule we keep these three considerations, with some changes.

Our proposed amendment included a fourth consideration that would have required the bank board to take into account and document whether the transfer was necessary, feasible, and the "least cost" alternative available. We remove the necessary and feasible consideration in the final rule because a bank will make these determinations when it reviews the remaining three considerations. We continue to believe that in deciding whether to make a transfer, a bank should take into account whether that transfer is less costly than other alternatives. Accordingly, we retain "least cost" and move it to the third consideration.

The Council also made two specific comments on individual considerations. First, the Council expressed concern that our proposed consideration requiring the bank board to take into account whether the bank will continue to be financially sound and maintain adequate capital after the transfer was too subjective. We understand this concern, and we change the consideration to require the bank board to take into account whether the transfer will prevent the bank from achieving its capital adequacy or business plan goals, as the Council suggested. We emphasize that the bank's capital adequacy and business plan goals must ensure that the bank will be financially sound and maintain adequate capital.

Second, the Council commented that the proposed consideration requiring the bank board to take into account whether the transfer would "enable the association to maintain service to borrowers" was not objective enough, because it did not set standards on the service. We agree and clarify that the bank must take into account whether the transfer will enable the association to maintain "sound, adequate, and constructive" service in accordance with section 1.1 (a) of the Act.

We point out that the rule requires that a bank board "take into account and document" whether the transfer satisfies these considerations. The rule does not,

however, require that banks satisfy these considerations in all cases. The rule does not, for example, require that the transfer be the "least cost" alternative available, merely that the bank board take into account and document its rationale in selecting the best solution taking into account all considerations, not just this consideration. Moreover, the rule does not set out the manner in which the bank board must take into account and document the considerations. In some cases, board minutes could provide satisfactory documentation of the considerations. Where appropriate, a bank board may decide that a particular consideration is not applicable. If so, the board must document why it believes the consideration is not applicable.

V. Notification Requirements

The final rule requires banks to provide their shareholders and us, before making a preferential or nonroutine transfer, with: (1) A description of the transfer, and (2) the banks' documentation of the three considerations discussed in section IV of this preamble. The proposed amendment would have required banks to notify their shareholders within a reasonable time after the transfer. The Council requested that we require banks to notify shareholders in advance so the shareholders can evaluate transfers before they are made. We agree with the Council and change the rule to include the same notification requirement to shareholders (at least 30 days before a transfer) as we require for notification to us. While a bank may disclose the name of the association receiving a transfer, it need not do so if, after considering the specific circumstances, it determines the disclosure would be inappropriate.

CoBank agreed that when it makes a preferential or nonroutine transfer to an affiliated association, it should be required to notify its affiliated associations. CoBank asserted, however, that when it makes such a transfer it should not be required to notify its approximately 2,000 cooperative association equityholders (including farmer cooperatives, rural utilities and international customers) who borrow under title III of the Act. CoBank argued that such notification would be "somewhat burdensome" and that it would be difficult to explain the transfer to its title III equityholders. We believe, however, that CoBank's title III equityholders have the same interests as association shareholders in being able to evaluate transfers made to affiliated associations. Accordingly, the rule continues to require that all banks (including CoBank) notify all

shareholders before they make preferential or nonroutine transfers to affiliated associations.

List of Subjects in 12 CFR Part 615

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

For the reasons stated in the preamble, amend part 615 of chapter VI, title 12 of the Code of Federal Regulations to read 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.

2. Revise the heading of subpart F to read as follows:

Subpart F—Property, Transfers of Capital, and Other Investments

3. Revise § 615.5171 to read as follows:

§ 615.5171 Transfer of capital from banks to associations.

(a) *Definitions for this section.*

(1) *Transfer of capital* means any payment or forbearance by a Farm Credit Bank or agricultural credit bank (collectively, bank) to an affiliated association, including but not limited to:

(i) The purchase of nonvoting stock or participation certificates;

(ii) The payment of cash;

(iii) Debt forgiveness or reduction;

(iv) Interest rate concessions or interest-free loans;

(v) The transfer of loans at other than fair market value;

(vi) The reduction or elimination of standard loan servicing or other fees; and

(vii) The assumption of operating or other expenses, such as legal fees or insurance premiums.

(2) *Preferential transfer of capital* means a transfer of capital that is not available to all similarly situated affiliated associations.

(3) *Nonroutine transfer of capital* means a transfer of capital that is not

available in the ordinary course of business.

(b) *Considerations for preferential or nonroutine transfers of capital.* Before authorizing a preferential or nonroutine transfer of capital, a bank board of directors must take into account and document whether:

(1) The transfer of capital is in the best interests of all of the shareholders;

(2) The bank will be able to achieve its capital adequacy and business plan goals after making the transfer of capital; and

(3) The transfer of capital is the “least cost” alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

(c) *Notification requirements.* At least 30 days before making a preferential or nonroutine transfer of capital to an affiliated association, banks must provide shareholders and the Chief Examiner of the Farm Credit Administration with a description of the transfer and the documentation required by paragraph (b) of this section.

Dated: September 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99-23966 Filed 9-14-99; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-NE-28-AD; Amendment 39-11290, AD 99-19-01]

RIN 2120-AA64

Airworthiness Directives; Teledyne Continental Motors O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, GTSIO-520, IO-550, TSIO-550, and TSIO-550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) O-470, IO-470, TSIO-470, IO-520, TSIO-520, LTSIO-520, GTSIO-520, IO-550, TSIO-550, and TSIO-550 series reciprocating engines. This action supersedes priority letter AD 99-09-17 that currently requires a one-time visual and ultrasonic (UT) inspection of the No. 2 and No. 5 crankshaft cheeks for cracks. All

crankshafts found with a cracked cheek must be replaced with a serviceable crankshaft prior to further flight. This action adds to the applicability TCM GTSIO-520 series engines and additional engines, identified by serial numbers (S/Ns), of currently affected engine series; references a revised service bulletin that clarifies snap ring installation; increases to 500 hours time-in-service (TIS) the cutoff for engines that require a more immediate inspection; and corrects the contact telephone number for TCM. This amendment is prompted by inspection results from the current priority letter AD. The actions specified by this AD are intended to prevent crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing.

DATES: Effective September 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-NE-28-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: “9-ane-adcomment@faa.gov”. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 200-7565. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone (770) 703-6096, fax (770) 703-6097.

SUPPLEMENTARY INFORMATION: On April 22, 1999, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 99-09-17, applicable to Teledyne Continental Motors (TCM) O-470, IO-470, TSIO-470, IO-520, TSIO-520,