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FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1024]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule; technical amendment.

SUMMARY: The Board is amending Regulation D (Reserve Requirements of Depository Institutions) to remove the definition of *De novo depository institution*. The definition is not used in the Regulation.

EFFECTIVE DATES: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Senior Attorney, Legal Division (202/452–3688). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 204.2(p) of the Board's Regulation D (12 CFR part 204) defines *De novo depository institution* to mean a depository institution that was not in business on July 1, 1979, and was not the successor by merger or consolidation to a depository institution that was in business before the merger or consolidation. The definition is not used in the Regulation. Accordingly, the Board is removing it.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending part 204 in chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1.The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.2, paragraph (p) is removed and reserved.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, November 18, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31354 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule will amend Farm Credit Administration (FCA or Agency) regulations concerning Farm Credit System (System or FCS) ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) to a Federal land bank association (FLBA). The amendments allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party; limit the scope of the regulation to System banks and associations; and remove descriptions of specific balloting procedures from the regulations. The amendments also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority from 50 days to 35 days after stockholder notification, or 15 days after submission of documents to the FCA for final approval, whichever occurs later. The effects of the amendments are to provide more flexibility to institutions and stockholders when stockholder votes occur, to extend security and confidentiality requirements to all stockholder votes of banks and associations, to apply such requirements only to banks and associations, and to accelerate the effective date of the above-described corporate actions.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** 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:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA proposed amendments to its balloting and reconsideration period regulations on March 20, 1998 (63 FR 13564) as a part of its continuing efforts to reduce regulatory burdens on the System. This rule was proposed in response to requests by several System institutions to revise the secret ballot procedures and to accelerate the effective date of certain corporate actions.

As explained more fully below, we have made revisions to the proposed amendments to §§ 611.330 and 611.340 and adopted substantially as proposed the amendments to §§ 611.505(e) and 611.1122(k).

We received comment letters on the proposed regulations from the Farm Credit Council (Council) on behalf of its member banks and associations; AgriBank, FCB (AgriBank); Farm Credit Leasing Services Corporation (Leasing Corporation); and one individual via electronic mail. In addition, we received comments via telephone from the Farm Credit Banks Funding Corporation (Funding Corporation) and from two FLBAs. AgriBank made general comments supporting the proposed changes. Other comments addressed specific issues, as described below. All of the comments were carefully considered in the formulation of the final rule.

II. Maintaining Secrecy of Ballots

We amend § 611.330 to (1) apply the regulation only to banks and associations, (2) give affected institutions more flexibility than in the existing or the proposed regulation to choose how to comply with confidentiality requirements, (3) clarify that institutions may allow a stockholder to give voting discretion to the proxy of the stockholder's choice, and (4) apply the provisions to all bank and association stockholder votes, not just director elections. The form of § 611.330 has been significantly revised, as described more fully below. We also adopt amendments to § 611.340 to (1) limit its scope to banks and associations, (2) apply its provisions to all bank and association stockholder votes, and (3) add a 3-year retention period for records in votes other than director elections. The remainder of § 611.340 is adopted substantially as proposed.

The application of the final regulations to only banks and associations is a change from both the existing and the proposed regulations and is made in response to comments from the Leasing Corporation, the Funding Corporation, and the Council. Those commenters observed that the confidentiality requirements of section 4.20 of the Act expressly apply only to ''lending institutions'' of the System; therefore, they suggested amendments to conform the scope of the regulation to the statute. System institutions made similar comments when these regulations were originally promulgated in 1988, but we opted at that time for a broader application. *See* 53 FR 50384 (December 15, 1988). We have now reconsidered our position and determined that the purpose of section 4.20 of the Act is met if the regulation applies only to banks and associations. We believe that the Act's secret ballot requirement is intended to assure borrowers that their voting decisions on institutional matters will not adversely affect their loan relationships. This principle is equally applicable to borrowers of FLBAs, even though these institutions are agents for the lending banks and are not direct lenders. Therefore, in the final rule, §§ 611.330 and 611.340 apply only to System banks and associations.

Section 611.330(a) of the final rule continues to require each bank and association to adopt policies and procedures ensuring confidentiality. It also continues to prohibit signed ballots in any bank or association stockholder vote, even when an independent third party tabulates the votes. The only persons that may have access to information regarding how or whether a stockholder has voted are an independent third party and the FCA.

Paragraph (b) of § 611.330 allows banks and associations to use identity codes on ballots or other types of identification procedures in all stockholder votes, provided that individual stockholder votes can be identified only by an independent third party that tabulates the votes. In weighted voting, an independent third party is still required to tabulate the votes. Unlike the existing regulation, the final rule does not contain descriptions of permissible procedures, because we believe that some institutions may have incorrectly viewed the specific descriptions as limiting the range of permissible procedures.

Paragraph (c) of § 611.330 has no substantive changes from the existing regulation. It has been restated to clarify that, in proxy voting, a stockholder's vote is not considered to be final until balloting begins. Until balloting begins, a stockholder may withdraw the proxy and vote the ballot himself or herself. This means that an institution must retain all proxy ballots unopened until the stockholders who attend the stockholders' meeting have had an opportunity to withdraw any proxy ballots that have been mailed.

Subsequent to the publication of the proposed rule, an FLBA informed us that it had discarded approximately 40 percent of the proxy ballots cast in a recent stockholder vote because some stockholders had failed to mail back a proxy authorization form along with their ballot. The FLBA asked us to amend the regulations to allow proxy authorizations either to be a part of the proxy ballot, which is a format typically used by corporations, or to be printed on the back of the return envelope.

The inclusion of a signed proxy authorization form on the ballot itself would violate the Act's prohibition against signed ballots. However, printing the proxy authorization form on the back of the return envelope would not violate either the existing or the final rule, as long as the ballot is in a separate sealed envelope inside of the return envelope.[1] We believe that the broader language of the final rule will help associations, especially those that previously had stockholder votes with significant numbers of spoiled ballots, to craft more user-friendly secret ballot procedures.

[1] Only one envelope would be needed if an independent third party opens the envelope and tabulates the votes.

We reviewed the proxy voting practices used by the System and observed that some practices differ from those used by publicly held corporations. Although some FCS institutions permit stockholders to choose a proxy other than the one designated by the institution, stockholders do not usually receive the right to give voting discretion to their proxy. In order to provide stockholders greater voting flexibility, we add a new paragraph (d) to § 611.330 clarifying that institutions are permitted to give stockholders the opportunity to give voting discretion to their proxies. An institution granting this discretion to its stockholders does not violate the secret ballot requirements in the Act.

The Council asked us to confirm the System's understanding that, notwithstanding the provision that an independent third party that tabulates the votes may not make disclosures about how or whether an individual stockholder voted, the third party could disclose the total numerical results of a stockholder vote. The Council stated that such disclosure helps ''to preserve confidence in the integrity'' of the stockholder vote. The final rule does not prohibit the disclosure of total numerical results, but we encourage institutions with weighted voting to consult with their stockholders on this issue. In weighted voting, as the Council pointed out, it is theoretically possible to determine from the total results how individual stockholders have voted, particularly when the institution has a relatively small number of stockholders.

We received two additional comments regarding the proposed amendments to § 611.330. AgriBank stated that the provisions regarding confidentiality in a stockholder vote appeared to ''fairly balance a stockholder's right to a confidential ballot with the rather minimal burden imposed on System institutions.'' An individual commenter expressed concern regarding the proposal to allow the use of identity codes on ballots. This commenter stated that the codes would defeat the secrecy of voting and provide an opportunity for misuse by those who had access to the marked ballots. We understand the commenter's concern but believe that the final rule's requirement of an independent third party to open the ballots and tabulate votes is an adequate means of preventing misuse of ballot information. We will, of course, continue to evaluate compliance as a part of our corporate approvals and examinations.

An FLBA commented on the proposed addition to § 611.340(c) that provided a 5-year minimum retention

period for records in votes other than director elections. The FLBA requested that, in any case where an independent third party tabulates votes and maintains the voting records, the independent third party be required to hold the voting materials for only 3 years. With respect to votes other than director elections, we agree with the FLBA that a 3-year retention period is adequate and have reduced the retention period in the final rule for all voting records that do not pertain to director elections. The minimum retention period applies to such records held by either the institution or an independent third party. However, for director elections, the existing retention period of the term of the director is unchanged. In most cases, director terms are for 3 years or less, and there is no compelling reason to retain the voting records for a period longer than the term of the director.

III. Change of Effective Date for Merger, Consolidation, or Transfer of Lending Authority

We amend § § 611.505(e) and 611.1122(k) to provide that, in the case of a transfer of direct lending authority or an association merger, the effective date of the transfer or merger may be as early as 35 days after stockholder notification of the results of the stockholder vote on the transaction, or 15 days after submission of final documents to the FCA, whichever occurs later. The effect of these changes is to accelerate by 15 days the earliest possible date when the merger or transfer of lending authority may occur. In addition, language is added to the same paragraphs to restate the requirement in section 7.9(b)(3)(A) of the Act that, if a valid petition for reconsideration is filed in a timely manner with the FCA, the merger or transfer of lending authority cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the final result of the first vote. These provisions are adopted substantially as proposed.

We received two comments on the proposed effective date amendments. AgriBank stated that it fully supported the proposal, especially in merger transactions where the merging institutions will be able to implement the wishes of their stockholders more quickly. An individual commenter was opposed to the proposed amendment, maintaining that stockholders should have the full amount of time required by statute to reconsider the merger or transfer of lending authority, because of the importance of the matters involved. We agree with the commenter that the decision is an important one and point out that the amendments we have adopted do not shorten the statutory time period during which stockholders may petition the FCA for a reconsideration vote. Stockholders will still be able to petition the Agency up to 35 days after results of the original vote are mailed: the 30-day period required by section 7.9(b)(3)(A) of the Act, and 5 days for delivery of the notice to the stockholders. The amendment merely shortens the time for the FCA to process final approval documents.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Election of Directors and Other Voting Procedures

3. Section 611.330 is revised to read as follows:

§ 611.330 Confidentiality in voting.

(a) No bank or association may use signed ballots in stockholder votes. Each bank and association must adopt policies and procedures to ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including with respect to the institution, its directors, stockholders, or employees, or any other person except:

(1) An independent third party tabulating the vote; or

(2) The Farm Credit Administration.

(b) A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting.

(d) A bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

4. Section 611.340 is amended by removing the words ''the election of directors'' and adding in their place, the word ''voting'' in the heading; by removing the words ''System institution'' and adding in their place, the words ''bank and association'' and by removing the words ''the election of board members'' and adding in their place, the words ''a stockholder vote'' in paragraph (a); by removing the word ''shall'' and adding in its place, the word ''must'' each place it appears in paragraphs (a) and (b); and by revising paragraphs (c) and (d) to read as follows:

§ 611.340 Security in voting.

* * * * *

(c) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(d) The voting procedures of each institution must provide for the establishment of a tellers committee or other designated group of persons which must be responsible for validating ballots and proxies and tabulating voting results. An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or other designated persons have validated the results of the vote.

Subpart E—Transfer of Authorities

5. Section 611.505 is amended by revising paragraph (e) to read as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(e) The effective date of a transfer may not be less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

6. Section 611.1122 is amended by revising paragraph (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(k) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Dated: November 16, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–31340 Filed 11–23–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–65–AD; Amendment 39–10890; AD 98–24–04]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This AD requires repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain SOCATA Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 1998 (63 FR 49881). The NPRM proposed to require repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed repetitive inspections would no longer be required on those flap carriages replaced with improved design parts.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. The replacements, if necessary, would be accomplished in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in the service bulletin and are available from the manufacturer.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 44 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections