

Orchard Dale Fruit Farms, Inc.

1282 Oak Orchard River Road

Waterport, NY 14571

Mr. Barry F. Mardock
Deputy Director
Office of Regulatory Policy
Farm Credit Administration
1501 Farm Credit Drive
McLean, Virginia 22102-5090

Dear Mr. Mardock:

Subject: Proposed Rule on Standards-of-Conduct Requirements (RIN 3052-AC44)

I am writing in regard to the Farm Credit Administration's proposed rule on Standards of Conduct. I appreciate the opportunity to comment. I own and operate Orchard Dale Fruit Farms, Inc. growing 300 acres of fruits and berries; and, Brown's Berry Patch, a pick-your-own berries and fruit operation. I serve on the Board of Directors of Farm Credit East. I am commenting on certain provisions of the proposed regulation; however, I also support the more comprehensive letter to be submitted by the Farm Credit Council.

While I support reasonable standards-of-conduct regulations, it is very important that such regulations are easily understood and do not interfere with normal business transactions. I am concerned that the proposed regulations create confusion and uncertainty.

Recognize "Ordinary Course of Business": The elected directors of the Farm Credit System depend on their livelihood as farmers, ranchers, producers or commercial fishermen. As such, they need the ability to purchase goods and services from other farmers in their community without the need to obtain prior written approval from the Standards of Conduct Officer. This should be the case even if the price of the good or service is subject to negotiations. Any further restrictions on a director's ability to run his or her business would create a significant disincentive for serving as a director.

Family: Section 612.2130 (3) provides a definition for "family" that after mentioning specific family members includes "...anyone whose association or relationship with the director or employee is the equivalent of the foregoing." The use of the word equivalent and the entire phrase is confusing, very broad, and should be deleted.

Guidance: Section 612.2135 (b) requires directors and employees of System institutions to follow "guidance" of the Farm Credit Administration. Given that these detailed provisions are regulations, additional regulatory directives in the term of "...policy statements, instructions, procedures and guidance" as proposed in the regulations should be eliminated.

Appearances of conflicts: Section 612.2136 (2) requires disclosures of "appearances" of conflicts of interests. This is very vague, far reaching and unreasonable to achieve and should be deleted.

Official Section 612.2236 refers to "official action." It is unclear as to what official action means. Is this a reference to "official loans" or this any business conducted by the Association including crop insurance policies or each loan of a director?

Section 612.2136 requires disclosure to the "official" or the Board of all "material" non-privileged information. Again, this is a very vague and broad disclosure requirement because there is no definition of what is considered "material" nor is there a definition provided for the term "privileged." Such vagueness will lead to second-guessing after the fact by the FCA, and will not result in meaningful disclosures. It is also not clear if this requirement applies in a situation where a director has already recused him or herself.

Prohibited Conduct – Section 612.2145 prohibits directors from participating in deliberations and determinations that directly or indirectly affect the financial interest of the director, the director’s relatives, and others. An exception for matters of general applicability affecting all shareholders/borrowers in a nondiscriminatory way has been eliminated. In its place, a new subparagraph 8 (b)(1) has been added to this section which permits director participation in matter otherwise prohibited under this section but only so long as the matter is one of “general applicability affecting all shareholders/borrowers in a nondiscriminatory way, as determined by the Standards of Conduct Official.” This prohibition on a director’s ability to act upon matters which may come before the Board is unduly burdensome and unworkable. It will require the Standards of Conduct Official to make a determination, on a case-by-case basis, of each item to be considered by the Board. It will also require a director to recuse himself from any discussion or deliberations which affect his or her particular industry (i.e. dairy farming) because those discussions will not affect all shareholders equally in a nondiscriminatory way. For example a discussion on the impact of dairy exports on dairy prices received by farmers could require a director that is a dairy farmer to recuse himself because this subject area does not have the same potential impact on all directors.

I am also concerned that these proposed regulations shift responsibility from individual directors to report their activity and comply with standard of conduct requirements to the association and the Standards of Conduct Official, who must now enforce and ensure compliance. The association should not be responsible for the actions of directors; associations should be responsible for insuring that all necessary steps have been taken to educate and inform directors about standards of conduct issues and requirements, but the association should not be held responsible for directors’ violations.

In closing, given the need for clarification of these regulations in number of areas, I urge that if FCA goes forward that a revised set of regulations be released for public comment.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Robert R. Brown, II". The signature is written in black ink and includes a stylized flourish at the end.

Robert R. Brown, II