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October 22, 2018

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

Re: Proposed Amendments to Outside Director Eligibility Regulations (RIN 3052-AC97)

Dear Mr. Mardock:

Compeer Financial, ACA (“Compeer”) appreciates the opportunity to comment on the Farm Credit Administration’s (“FCA”) proposed amendments to the Outside Director eligibility regulations found at 12 C.F.R. Part 611. I am submitting these comments on behalf of the Board of Directors and management of Compeer. We are also aware of the comments being submitted by the Farm Credit Council and wish to express our support for those comments.

Compeer recognizes the importance of independence for our outside directors, but we are concerned the proposed amendments may result in highly talented and desirable outside director candidates being ineligible because of a very remote connection to the Farm Credit System. The amendments, as currently proposed, establish limitations significantly beyond the limitations set forth in the Farm Credit Act. Finally, the proposed amendments minimize the important characteristic of specialized expertise, which FCA and Congress recognized when the outside director requirement was added to the Farm Credit Act.

Prohibition Based on a Relative with a Distant Connection to System

The text of the Farm Credit Act is clear. System association boards shall include at least one member “elected by the other directors, which member shall not be a director, officer, employee, stockholder or agent of a System institution.”¹ The Act only limits the prospective outside director’s relationships with the System.

FCA’s proposed amendments go well beyond this by looking to a prospective outside director’s relatives and the relationships those individuals may have with the System. Much of the proposed regulation is, therefore, not consistent with the unambiguous language of the Farm Credit Act. Prohibiting someone from being considered as an outside director merely because they have a relative who is a director, officer, employee, agent stockholder or borrower of any System institution is both unnecessary and a significantly broader exclusion than is supported by plain language of the Farm Credit Act. It will likely result in many exceptional potential candidates for outside director positions from even being considered.

Indeed, if FCA’s proposed restriction is adopted as proposed, an otherwise imminently qualified outside director candidate could be ineligible for a myriad of reasons. For example, an outside director candidate would be ineligible simply because:

¹ 12 U.S.C. §§ 2072 and 2092.

- 1) Her husband's brother or sister is a farmer in another part of the country and happens to have a loan with the local System institution. The prohibition as written would apply whether the outside director candidate and her brother- or sister-in-law had a close relationship, a distant or occasional relationship, or an estranged relationship.
- 2) Her son-in-law works as an employee at another System institution.
- 3) Her sister is a partner at a law firm that does work for another System institution.

These are just a few examples of the relationships the proposed regulation would suggest are too close to allow for an outside director to be sufficiently independent. We believe boards of directors are fully capable of assessing the independence of and evaluating any potential conflicts that may exist for outside director candidates who may have a relative with a relationship with another System institution. Such a relationship should not be an automatic disqualification from service.

Further, the breadth of FCA's exclusion and the commentary accompanying the proposed amendments ignores a significant rationale for the requirement that System institution boards include outside directors. While there is minimal evidence in the congressional record directly related to the Congressional intent for adding outside directors as part of the 1987 amendments to the Farm Credit Act, FCA itself provided some insight. At the time, Frank W. Naylor, Jr., Chairman of the Board of FCA said the following:

*"Restructuring is a common thread running throughout the proposals. It is generally recognized by all interested parties that some form of restructuring must take place if the System is to continue to offer credit to agricultural producers. Variance in discussion appears to center on offering lending services by System institutions outside of traditional regional boundaries and using of outside directors on institution boards to bring a different perspective to operations. Outside directors can be a positive influence in improving business operations. When outside directors are discussed the communication often breaks down over how they should be chosen. The more important question than how is who. The involvement of outside directors with strong business credentials may offer a significant change in perspective and operations."*²

Additionally, the Statement of Marvin R. Duncan, one of the FCA board members at that time, provided in part:

*"I believe the expertise that outside directors could bring to system institutions would be considerable. Outside directors should be mandatory on the district level and encouraged among associations. They should be selected from among persons experienced in the financial market place and in financial management. They would, of course, have to be adequately compensated as an incentive to serve."*³

In other words, in addition to independence, expertise was a primary motivation for adding outside directors to System institution boards. To presume that someone who happens to have a relative with some affiliation to a System institution is by definition not independent unnecessarily limits a System board's ability to attract that expertise. It ignores both the complex reality which can arise from the multitude of possible personal relationships and a board's ability to evaluate the appropriate independence of director candidates.

² *Agricultural Credit Conditions, Problems, and Legislative Proposals, Relating to the Farmers Home Administration, the Farm Credit System, and Commercial Farm Lenders: Hearings Before the Subcommittee on Conservation, Credit, and Rural Development of the House Committee on Agriculture*, 100th Cong. 1634-1635 (1987) (Emphasis added).

³ *Id.* at 1648.

Affiliated Organization Definition

The language of the Act is clear, the exclusion on serving as a “director, officer employee, stockholder or agent of a System institution” applies at the time the outside director is elected to a System institution board. Indeed, the current regulation reflects this reality by providing, in part, that “no candidate for an outside director position” may have an affiliation with the System.⁴ Consistent with the Act, the current regulation appropriately uses the term “candidate,” as opposed to more broadly extending the prohibition to someone who is already serving as an outside director for a System institution. FCA’s proposed amendments to the regulations unnecessarily go beyond the limitations Congress intended when it added the requirement for outside directors to the Act. An outside director’s independence on a System institution board should not be presumed to be compromised simply by that outside director utilizing his or her expertise and representing that institution on, for example, the board of a 4.25 service corporation or another affiliated organization. In fact, the proposed amendments also conflicts with FCA’s existing guidance that clearly suggests all directors regardless of how they end up on a System board have the same responsibilities and duties as stockholder-elected directors.⁵ To suggest an outside director cannot utilize his or her expertise on behalf of an association in the same way as a stockholder-elected director runs counter to this guidance.

Conclusion

The ability to attract highly qualified candidates to serve as farm credit outside directors can be challenging given the time commitment and workload associated with System board service. We are concerned FCA’s proposed amendments not only go well beyond the limitations intended by Congress but would also significantly limit the applicant pool for these importance roles in System governance.

Sincerely,



Mark Cade
Chairman of the Board

⁴ See FCA Reg. 611.220 (emphasis added).

⁵ See FCA Bookletter BL-0009