



July 25, 2019

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

Re: Proposed Rule – 12 CFR Parts 611 and 619 – RIN 3052-AC97; Eligibility Criteria of Outside Directors

Dear Mr. Mardock:

Thank you for allowing me to submit comments on the proposed rule pertaining to outside directors after October 23, 2018, the date originally set for sending comments to the Farm Credit Administration (FCA). The proposed rule will have an immediate, adverse effect on AgCarolina Farm Credit, ACA (AgCarolina). This adverse effect brought into focus for me the ramifications of the proposed rule on institutions in the Farm Credit System (System) and for that reason, among others, I felt that it was important to comment.

My comments on the proposed rule are submitted in my capacity as President and Chief Executive Officer of AgCarolina. My comments reflect my positions and those of AgCarolina's Board of Directors. My comments are in line with those submitted by AgFirst Farm Credit Bank in a letter dated October 22, 2018, and by the Farm Credit Council in a letter dated October 23, 2018. For the reasons in this letter and the letters from AgFirst Farm Credit Bank and the Farm Credit Council, I respectfully request that the FCA either withdraw the proposed rule on outside directors, or change the proposed rule by, at a minimum, limiting the new eligibility criteria to actual, direct, existing relationships with only the System institution that is vetting persons for a position as an outside director, rather than past or present, direct or indirect, actual or perceived, relationships with any and all System institutions.

Best Practices

I believe, like other commentators, that safety and soundness are paramount for System institutions. I also acknowledge, as the FCA set out in the supplemental information accompanying the proposed rule, that safety and soundness can be achieved, in part, through the use of best practices in corporate governance. But, best practices in corporate governance should be limited to those practices that achieve optimal results, without being overly costly, administratively burdensome, personally intrusive, or otherwise detrimental to an organization. Also, best practices in corporate governance should be limited to those practices that take into account the attributes of an organization, including its organizational structure and ownership (e.g. public for-profit organization, private for-profit organization, cooperative organization, non-profit organization), its purposes and missions, whether the organization is regulated or non-regulated, its businesses and the complexity of those businesses, and the relative control over



corporate governance by senior management at the level of the board of directors. For example, best practices in corporate governance for System institutions, with their unique cooperative structures, and purposes and missions, does not need to be the same as best practices in corporate governance for large, public, for-profit organizations, which are often the antithesis of System institutions, particularly in areas of corporate governance at the level of the board of directors.

With respect to best practices in the selection of outside directors, the only implication that can be drawn from the proposed rule is that the FCA has determined, for some unstated reason, that the current rules for System institutions are wholly deficient; have led or have a clear and present danger of leading to the selection of outside directors with actual, material conflicts of interest; and accordingly, need to be changed to conform more closely to corporate governance practices that are being considered for some large, public, for-profit organizations. This implication does not reflect my experiences, which are derived from thirty-six years of employment within the System, including twenty-four years with AgCarolina, first as its chief financial officer and now as its president and chief executive officer. Based on my experiences, the current rules on selection of outside directors are best practices for organizations with the attributes of System institutions, and should be deemed reasonable for safety and soundness in System institutions. Stated differently, the current rules for outside directors fully incorporate appropriate corporate governance practices for System institutions. When the current rules are followed, optimal results have been and continue to be achieved in corporate governance of System institutions with respect to vetting and selection of outside directors.

While my experiences validate the current rules on selection of outside directors, these same experiences require me to conclude that the proposed rule does not reflect best practices for organizations with attributes of System institutions; and if finalized, will likely lead to less than optimal results in corporate governance relative to the selection of outside directors. At the very least, the proposed rule will be costly and administratively burdensome for System institutions; will be personally intrusive for candidates, their families, and their affiliated organizations; and compliance will be impossible in many instances and impractical in most others. Finally, the proposed rule will result in the exclusion from consideration of otherwise eligible candidates from outside director positions; will result in smaller, and perhaps less qualified, pools of candidates; and, as discussed below, for AgCarolina (and apparently other System institutions), the loss of an outside director solely because of the mere existence of a family relationship. None of the foregoing can be deemed positive. This means, to me, that the proposed rule: is not and cannot be a best practice in corporate governance for System institutions; does not necessarily advance or promote safety and soundness for System institutions; and may actually prove detrimental in both the short-term and long-term.

Current Rules

The current rules pertaining to selection of outside directors are effective. The current rules reflect the cooperative nature of System institutions and are keenly attuned to the distinguishing characteristics of corporate governance in System institutions. The current rules are very thorough and robust, but still appropriately manageable – they allow for the identification and selection of qualified candidates for outside directors, without being overly costly or

administratively burdensome, or personally intrusive. Further, the current rules, when combined with the existing rules relating to standards of conduct, more than adequately deal with issues the proposed rule appears to be attempting to address.

To illustrate the effectiveness of the current rules, during my twenty-four years with AgCarolina, AgCarolina has been able to attract, select, and retain qualified outside directors. The processes AgCarolina has followed in identifying, vetting, and selecting candidates have been comprehensive and meticulous, but not overly costly or burdensome to AgCarolina, or too personally intrusive to candidates or their families. The outside directors selected through these processes performed, or are now performing, their duties and responsibilities as board members ethically and with independent judgment. Moreover, they each have strengthened, or are now strengthening, the boards on which they served, or are now serving, by bringing unique perspectives, and expertise and knowledge, without any actual or perceived conflicts of interests arising from direct or indirect personal or business relationships with other System institutions or with affiliated organizations. By virtue of the foregoing, for me, any argument that the current rules are not effective or need to be revised as set out in the proposed rule, is misguided. Under the proposed rule, it is possible that one or more of the above mentioned directors may have been disqualified from serving. That would not have served AgCarolina's interest, or the interest of any other System institution.

Proposed Rule

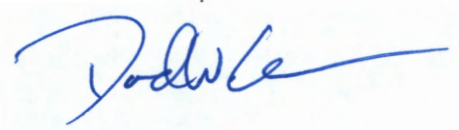
As others have commented, the proposed rule significantly deviates from the express criteria for outside directors set out in the Farm Credit Act of 1971, as amended (Act). The Act provides that an outside director "... shall not be a director, officer, employee, stockholder, or agent of a System institution." This language is not ambiguous and it is not subject to varying interpretations. As such, the regulatory clarifications in the proposed rule that expand on the restrictive aspects of the Act's criteria are not needed or warranted, and are actually contrary to the Act's mandates regarding criteria for outside directors. This is particularly the case when the current rules, which reflect the Act's unambiguous language, are sufficiently thorough and robust, and apparently are achieving their intended purposes; or, when appropriately applied, will achieve their intended purposes when used in conjunction with the rules relating to standards of conduct.

For AgCarolina, the proposed rule, if finalized, will have immediate, adverse consequences; all for no good reason. AgCarolina suspects that it is not unique among System institutions in this regard. AgCarolina just recently selected a new candidate for an outside director. If the proposed rule becomes effective in February, 2020, this candidate will be required to resign, or will not be eligible for reappointment when the candidate's initial term expires. This loss will have an actual, quantitative, adverse effect on AgCarolina's board of directors and AgCarolina's operations. There will be a loss of knowledge, expertise, and understanding that will have to be replaced through the expenditure of considerable, additional cost, expense, time, and energy. Also, this loss will negatively affect the new candidate in any number of ways, including personal perceptions relating to the new candidate (not to mention AgCarolina). Again, all of the foregoing for no good reason and without strengthening safety, soundness, or independence.

Conclusion

Thank you for letting me comment on the proposed rule. Safety and soundness are imperative, and best practices in corporate governance help with safety and soundness. But, best practices in corporate governance must achieve optimal results, without being overly costly, administratively burdensome, personally intrusive, or otherwise detrimental to an organization. The proposed rule may or may not achieve optimal results with respect to selection of outside directors, but it surely will be overly costly, administratively burdensome, personally intrusive, and otherwise detrimental to System institutions, including, as shown above, AgCarolina. As such, I respectfully request that the FCA either withdraw the proposed rule, or change the proposed rule by, at a minimum, limiting the new eligibility criteria to actual, direct, existing relationships with only the System institution that is vetting persons for a position as an outside director, rather than past or present, direct or indirect, actual or perceived, relationships with any and all System institutions.

Sincerely,



David W. Corum
President & CEO