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December 20, 1990

To: The Chief Executive Officer

Each Farm Credit Bank

Federal Farm Credit Banks Funding Corporation

From: David C. Baer, Director

Office of Examination

Subject: Farm Credit Investment Bonds

Attached is a copy of a letter from the Department of the Treasury to Chairman Steele granting exemption from the provisions of sections 15C(a), (b), and (d) of the Securities and Exchange Act of 1934 as amended by the Government Securities Act of 1986 (Pub. L. 99-571, 100 Stat. 3208, 15 U.S.C. 780-5(a), (b), and (d)) to all associations of the Farm Credit System with respect to the sale of Farm Credit Investment Bonds. The letter describes in some detail the requirements with which any investment bond program must comply to maintain the exemption granted.

Those banks and associations that sell investment bonds should evaluate their programs to assure strict compliance with these requirements. FCA examiners will be reviewing and investment bond program in future examinations. In these examinations, particular attention will be given to the adequacy of disclosure of the characteristics of the instrument being sold and the financial condition of the selling institution and to compliance with the procedural restrictions on association involvement in the program.

Attachment

DEPARTMENT OF THE TREASURY

BUREAU OF THE PUBLIC DEBT

WASHINGTON, D.C. 20239-0001

November 26, 1990

Dear Mr. Steele:

We have received letters from the Farm Credit Bank of St. Paul and the Production Credit Association of Minnesota Valley (June 12, 1990), and the Western Farm Credit Bank and several associations in the Western District (June 21, 1990) requesting exemptions from the provisions of Sections 15C(a), (b), and (d) of the Securities Exchange Act of 1934 (Exchange Act), as added by the Government Securities Act of 1986 (GSA) (Pub. L. 99-571, 100 Stat. 3208, 15 U.S.C. 78o-5(a), (b), and (d)). The requests for exemptions stem from activities conducted in connection with the sale of Farm Credit Investment Bonds. The two requests are similar to a request for exemption from registration previously submitted by the Farm Credit Bank of Baltimore and Keystone Farm Credit ACA (Keystone), dated October 4, 1989. An exemption was granted in response to that request.1

In consideration of the requests precipitating this response, we examined the Investment Bond program for the entire Farm Credit System. We understand the salient facts to be as follows.

A. Structure of the Farm Credit System Institutions

The Farm Credit Banks (FCBs) are federally-chartered instrumentalities of the United States, created by the mandatory mergers of Federal Land Banks and Federal Intermediate Credit Banks, as provided for in Section 410 of the Agricultural Credit Act of 1987 (1987 Act) (Pub. L. 100-233 (uncodified); 12 U.S.C. 2011 note). The FCBs, as part of the Farm Credit System, are subject to regulation and examination by the Farm Credit Administration (FCA) (12 U.S.C. 2002 and 2254). The FCBs and other institutions comprising the Farm Credit System are intended to serve the credit needs of farmers and ranchers, while encouraging participation in the management, control, and ownership of the system (See 12 U.S.C. 2001).

One of the primary functions of the FCBs is to provide funding for the lending operations of the various associations within each of their territories. These associations, created or continued pursuant to the 1987 Act, are: Federal Land Bank Associations, Federal Land Credit Associations, Production Credit Associations, and Agricultural Credit Associations.2 Like FCBs, these associations are regulated and examined by the FCA. They are, by statutory designation, or as the result of statutorily-mandated mergers, federally-chartered instrumentalities of the United States.

Eligible borrowers of the different associations include farmers, ranchers, producers, harvesters of aquatic products, and other eligible persons as described in the Farm Credit Act of 1971, as amended by the 1987 Act, and regulations of the FCA (12 U.S.C. 2017 and 12 CFR 613 Subpart B).

In order to obtain a loan from any of the associations, a borrower must become a member by purchasing stock or participation certificates in an amount required by the association's by-laws. Thus, each association, a federally-chartered instrumentality of the United States, is owned by its member-borrowers. The board of directors of each association consists of stockholders elected by its voting membership, and one board member, selected by other members of the board, who is not a stockholder, officer, employee, or director of any Farm Credit System institution.3

B. The Investment Bond Program

The transactions that are the subject of the requests for exemptions involve instruments referred to as Farm Credit Investment Bonds (IBs). IBs are issued by, and are obligations of, individual FCBs, and are issued pursuant to 12 U.S.C. 2153(b), (e), and the regulations of the FCA (12 CFR [615.5110](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/615.5110.docx)-[5130](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/615.5130.docx)). IBs are government securities pursuant to Section 3(a) (42) (B) of the Exchange Act (15 U.S.C. 78c(a) (42) (B)), having been designated by the Secretary of the Treasury for exemption pursuant to Section 3(a) (12) of the Exchange Act (15 U.S.C. 78c(a) (12), 43 FR 24933). The FCA consults with Treasury regarding the issuance of IBs (12 CFR [615.5000](http://ww3.fca.gov/readingrm/handbook/FCA%20Regulation/615.5000.docx)(e)).

The IBs to be issued by the various FCBs are subject to a number of limitations imposed by statute and the FCA. These limitations include, among other things, that issuance of the bonds be subject to approval by the FCA and that the eligible purchasers be limited to employees, retired employees, and members of FCBs and associations within the issuing FCB's territory. IBs are issued, subject to instructions of the FCA regarding their terms, at varying maturities, interest rates, minimum investments, penalties for early redemptions, and reinvestment terms. While IBs can be issued in definitive form, it has been represented that they are currently issued only in book-entry form.

C. Involvement of the Associations in the Investment Bond Program

Some FCBs have proposed that interested associations in their respective districts provide certain services related to the sale of IBs. It is the nature of these services which has raised questions concerning a need to register and ultimately to the requests for exemptions. It has been represented that the involvement of associations with respect to the sale of the IBs would be limited to certain specified activities that have been represented as clerical and/or ministerial in nature, and limited to the following.

The associations would stock and make available printed informational materials provided by the FCB issuing the IBs and would not provide any information other than that set forth in the printed materials. The printed materials will clearly state that the FCBs and not the associations are the issuers of the IBs.

Any association member or employee that wanted to purchase an IB could contact their association's office or the respective FCB. The association or FCB would obtain the necessary information to issue the IB. If obtained at the association, it has been represented that the information is transmitted to the FCB, and the appropriate book-entry record creating the security is recorded based upon the information.

It has been represented that funds to purchase IBs are made directly payable to the FCB and, in some instances, may be directly transmitted. Upon redemption of the IBs, the proceeds are issued directly from FCBs to investors. The associations do not maintain custody of customer funds.

It has been represented that FCBs compensate associations for their costs associated with the sale of IBs. Different methods of calculating reimbursement for actual expenditures have been described to Treasury. In all cases, the level of reimbursement is left to the discretion of the FCB and the amounts may or may not equal the costs of distribution. The FCB can unilaterally adjust the amounts of reimbursement. It has been represented that while reimbursement may be based on a percentage of the principal amount or a percentage of the savings realized from obtaining lower cost funds through the sale of IBs, there are no commissions or any transaction-based compensation paid to employees in connection with the sales of IBs, and that in no circumstance, are fees charged to investors by the associations.

Furthermore, it has been represented that the activities of the FCBs and associations with regard to IBs, including the content and distribution of the printed informational materials, are reviewed by the FCA as part of its regular examination procedures. We also understand that associations with direct lending authority are examined on an annual basis while those with indirect lending authority are examined on-site every three years (off-site examinations are conducted during the intervening years (See 12 U.S.C. 2254)).

It has been represented that the activities conducted by the associations are ministerial and clerical in nature not amounting to those of a broker. However, to the extent that an association's activities could be considered to be those of a broker, it has been requested that the association be exempted from the registration requirements set out at Section 15C of the Exchange Act in light of the limited nature of the IB program and existing federal oversight.

D. Request for Exemption and Treasury's Response

We have discussed in our previous letter to Keystone and the Farm Credit Bank of Baltimore the roles of the FCBs and various associations, as part of the Farm Credit System, in providing the United States agricultural sector with a dependable source of credit. Since interest in receiving exemptions extends beyond one FCB district, we have decided to evaluate the requests for exemptions submitted by the Farm Credit Bank of St. Paul and the Western Farm Credit Bank in the context of the entire Farm Credit System. Given these considerations, and the representations that have been made in the letters requesting exemptions, we have determined that exemptions from the registration requirements of Section 15C of the Exchange Act and the regulations thereunder are warranted and should apply to all associations within the Farm Credit System. These exemptions are granted without consideration of whether the activities conducted by the FCBs and associations are those of a government securities broker or dealer.

In order to ensure that investors are sufficiently protected, however, the exemptions are subject to the limitations described below. We have determined that these exemptions are consistent with the public interest, the protection of investors, and the purposes of the GSA given the current structure of the Farm Credit System, the unique nature of the IBs, and the limited activities of the associations and their employees. We have consulted with the staff of the Securities and Exchange Commission as well as the FCA in reaching this decision.

Accordingly, pursuant to 15 U.S.C. 78o-5(a) (4), we hereby grant exemptions from the provisions of Sections 15C(a), (b), and (d) of the Exchange Act (15 U.S.C. 78o-5(a), (b), and (d)), and the regulations thereunder, to the various associations that comprise the Farm Credit System with request to the aforementioned securities transactions subject to the following limitations: (i) that the activities of the associations with respect to the IBs be limited to the stocking and distributing of the informational materials furnished by the FCBs and the taking and transmitting of investor information needed to effect sales; (ii) that any responses by employees to investor questions will be limited to relating information contained in the informational materials, and no employee will discuss the merits of, or recommend the purchase of, IBs or any other security; (iii) that the printed materials clearly state that the FCB and not the association is the issuer of IBs, that IBs are not direct obligations of the United States, and that IBs are in no way insured or guaranteed as to principal or interest by the United States or any governmental entity; (iv) that all sales of IBs arranged by the associations take place on the premises of the associations; (v) that the associations may not maintain custody of customer funds in connection with purchases and redemptions of IBs (i.e., funds for purchases of IBs must be directly payable to the FCB and all proceeds (redemption and interest) are made directly from the FCB to investors);4 (vi) that association employees may not receive any compensation related to transactions in IBs; (vii) that associations may not charge a fee to investors; and (viii) that the IB program, including the content of informational materials, will be subject to regular examination by the FCA.

These exemptions pertain only to the sale of IBs within a single FCB district (i.e., an association in one district may not distribute IBs issued by an FCB of another district). Any change in the facts or circumstances of your request would require further analysis and could lead to termination of the exemptions.

Pursuant to 17 CFR 400.2(c) (7) (i), the incoming letters and this response will be made immediately available to the public.

Sincerely,

Richard L. Gregg

Commissioner

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1 Letter from Richard L. Gregg to Glen L. Stevens and Bernard C. Flory (March 5, 1990) granting request for exemption from registration.

2 See amendments to 12 CFR 613-616, and 619 set out at [55 FR 24861](http://ww3.fca.gov/readingrm/fedreg/Federal%20Register%20Documents/55%20FR%2024861.docx) (June 19, 1990) which reconcile the authorities of institutions created by mergers required or authorized by the 1987 Act.

3 12 U.S.C. 2072 (Production Credit Associations), 2092 (Federal Land Bank Associations). As merged associations, Federal Land Credit Associations and Agricultural Credit Associations derive similar structures from their comprising entities.

4 In a previous exemption granted to Keystone and all other Agricultural Credit Associations within the Farm Credit Bank of Baltimore District (March 5, 1990), it was represented that redemptions were handled through a zero balance account maintained by Keystone at a depository institution. Treasury has informed Keystone and the Farm Credit Bank of Baltimore that if the associations wish to remain exempt from the registration and regulatory requirements, all proceeds must be issued directly from the Farm Credit Bank of Baltimore to the customer. The associations have been given 60 days from the date of this letter to comply with this requirement.

Harold B. Steele, Chairman

Farm Credit Administration

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