

FCA Proposed Rule – Termination of System Institution Status Fact Sheet¹

(12/8/05)

This proposed rule updates the existing regulations in 10 primary areas as follows:

1 – Ensure Sufficient Time and Information for FCA, the Institution Board, and Institution Stockholder Deliberations.

To provide sufficient time for the FCA Board, the institution's board, and institution stockholders to deliberate, we separate our review of stockholder disclosure information, in the plan of termination, from our review of the termination itself, in accordance with the Farm Credit Act.

This means there will be a 2-step approval or disapproval process for FCA:

- In the first step, we will review the disclosure information prior to its submission to equity holders, as in the existing regulation. This review is subject to a 60-day clock, in accordance with section 7.11 the Act, and will ensure that stockholders have the necessary disclosures to make an informed decision. We state that we will determine when the disclosure information is complete and when the 60-day clock begins.
- In the second step, we will review and approve or disapprove the termination itself, in the event that equity holders have voted to approve the termination. This is in accordance with section 7.10 of the Act, and is not subject to a specific timeframe. However, FCA will act in a reasonable time.

We believe this clear separation of the two approvals will ensure the proper level of deliberation as to the merits of the proposal apart from the adequacy of the stockholder disclosure materials.

Also, to ensure sufficient time to prepare for this extraordinary event, we require the institution to wait 30 days after the notice to equity holders is sent before the institution may submit a plan of termination to us for our approval.

2 – Provide for More Timely Communication with Stockholders, the Public, and FCA.

We propose to permit a terminating institution to communicate, without our prior approval, with stockholders and the public during the termination process. Along with this new flexibility, we require the institution to timely file such communication with us. We may require the correction of information that we deem misleading or inaccurate. In addition, we may require certain termination-related documents to be posted on the institution's Web site and our Web site. We make this proposal to recognize the benefit of increasing the flow of important information to stockholders and to recognize the more common use of the Internet.

3 – Provide for Special Studies, Analyses, and Rulings.

We propose that we may require a terminating institution to obtain independent analyses of, and rulings on, matters related to the proposed termination, as well as to hold convenient informational meetings for stockholders. We make this proposal to ensure sufficient information is provided to stockholders and FCA for such items as: fair value assessments; rulings on tax implications; and effect of termination on equity holders, the Farm Credit System, and other parties.

¹ In accordance with FCA Board Policy Statement 37, during a comment period, substantive oral communication between FCA staff (including Board Members) and the public (including System representatives) will be summarized and placed in the public rulemaking file. From the end of the comment period until the adoption of the final rule, substantive discussions between FCA staff and the public should be curtailed. If new facts or arguments are brought to the FCA's attention, the communication must be in writing so that it can be placed promptly in the rulemaking file.

4 – Ensure Director Rights.

We propose to strengthen protections to enable directors to consult with independent legal counsel and allow public or private expressions of their opinions about the termination. We make these proposals to recognize the important roles of directors in this extraordinary event.

5 – Require Voter Quorums.

We want to ensure sufficient stockholder representation in voting processes by imposing a quorum requirement of at least 30 percent of voting stockholders at the stockholder meetings for the termination vote and for any reconsideration vote. We believe that, in practical terms, the actual number of voters would be higher; however, because the termination is so important, we want to ensure at least a minimum number of participants.

6 – Remove "Material Adverse Effect" Criterion.

We eliminate a potentially confusing criterion pertaining to reasons why we may disapprove a termination application. That criterion in the existing rule pertains to a material adverse effect on the ability of the remaining System institutions to fulfill their statutory purpose. Because that is only one of many criteria the FCA would consider, including it in the regulation could cause some to believe it is our only, or main, criterion.

7 – Disclose Changing Structure After a Termination Event.

We require the institution, if applicable, to explain any corporate restructurings that will occur within 18 months after the termination. We believe this requirement is important for equity holders to be aware of post-termination plans for their institution.

8 – Require Directors to Vote Three Times on Termination.

We also provide that the board of directors of a terminating institution must vote at three different times during the process, to ensure that the board continues to support the termination. We believe this requirement is important because the termination is such an extraordinary event.

9 – Clarify Treatment of Taxes.

We clarify that the institution must include in assets any tax benefits. This will balance our requirement of subtracting tax liabilities from the assets in the exit fee calculation.

10 – Eliminate Outdated FAC References.

We remove all references to payment of Financial Assistance Corporation debt, because that debt was repaid earlier this year.