

81-5-18. Notice filing requirements for securities of agricultural associations.

(a) Exemption. The sale of a security of a cooperative organized under K.S.A. 17-1601 et seq., and amendments thereto, to a person who is not a member pursuant to K.S.A. 17-1606, and amendments thereto, shall be exempt from the requirements of K.S.A. 17-12a301 through 17-12a306 and K.S.A. 17-12a504, and amendments thereto, if the following requirements are met:

(1) The cooperative shall file a notice with the administrator that includes the following items:

(A) A filing fee as specified in K.A.R. 81-5-8;

(B) a copy of any underwriting or selling agreements;

(C) a copy of the cooperative's bylaws, operating agreement, or similar document;

(D) A copy of a prospectus that discloses all material facts concerning the investment, including the following information:

(i) The name and address of the cooperative;

(ii) a description of the security being offered;

(iii) the total amount of securities being issued;

(iv) a brief summary of key aspects of the offering;

(v) a description of the material risks associated with the offering, which may include risk factors related to unprofitable operations, unsound financial condition, absence of a market for the cooperative's securities, inexperience of management, and dependence upon a particular customer or group of customers; risks affecting the industry as a whole; and any other facts that tend to make the offering more risky;

(vi) a description of the business or proposed business;

(vii) a description of the proposed use of proceeds, in an itemized format;

(viii) a description of the responsibilities, experience, and compensation of directors, officers, and any other persons having similar status or performing similar functions for the cooperative;

(ix) a description of the plan of distribution for the securities;

(x) a summary of the cooperative's capitalization;

(xi) a description of any pending litigation, action, or proceeding to which the cooperative is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(xii) a description of the general federal and state tax consequences of owning the security; and

(xiii) the historical financial statements for the past three fiscal years or since the cooperative's inception, whichever period is shorter, that are in conformity with GAAP, the most recent of which have been audited by a CPA. If the balance sheet in the financial statements is more than 120 days old on the date the notice is filed with the administrator, then interim financial statements made in conformity with GAAP and not more than 120 days old shall be included in the prospectus;

(E) a copy of any advertising materials or any summaries of the offering document to be used in the offer or sale of the securities in Kansas.

(F) a copy of the subscription agreement;

(G) the name, business address, and a brief description of the employment responsibilities of each agent who will represent the cooperative in the offer or sale of the securities in Kansas;

(H) a copy of the trust indenture if the offering involves debt securities; and

(I) any other relevant information or document requested by the administrator.

(2) If the security is a debt instrument, the cooperative shall sell no more securities than it can reasonably repay in the ordinary course of its operations. The cooperative shall demonstrate, to the administrator, its ability to repay the debt as it comes due.

(3) If the security is a debt instrument issued to finance the purchase or improvement of real property, the cooperative shall demonstrate that the project can be completed with the proposed proceeds from the offering and other available funds. The debt shall be secured by a trust indenture that obligates the cooperative to make payments and to pledge properties owned or to be acquired by the cooperative. The cooperative shall provide an independent appraisal report to the administrator and shall demonstrate that the value of the pledged property is sufficient to secure the debt.

(4) If the security is not subject to a firm underwriting agreement, the proceeds shall be deposited and held in an escrow account until a specified minimum amount of proceeds has been deposited so that the cooperative can accomplish the primary purpose of its financing plan or complete a specified stage of a construction project in which a mortgage can be recorded to secure the debt.

(b) Review. Within 30 days after the notice is filed under subsection (a), the notice filing and related documents shall be reviewed by the administrator, and a letter shall be issued by the administrator either to advise the cooperative that the administrator has no objection to the cooperative's claim of exemption under this regulation or to inform the cooperative that the filing is incomplete or fails to meet the requirements for this exemption. In reviewing the issuer's compliance with the conditions specified in subsection (a), the analogous provisions of the statement of policy regarding church bonds, as adopted by reference in K.A.R. 81-7-2, may be applied by the administrator.

(c) Waivers. For good cause shown, the requirements of this regulation may be waived, in whole or in part, by the administrator.

(Authorized by K.S.A. 2005 Supp. 17-12a605(a); implementing K.S.A. 2005 Supp. 17-12a201(8); effective Jan. 19, 2007.)