

Cooperatives - Filing Offering Statements

Cooperatives raise capital for their development and operations by offering to sell securities to members and non-members. By definition, securities include both shares issued by the Co-op and loans made to the Co-op as well as other instruments like bonds or debentures.

Some offers are free from the requirements of *The Cooperatives Act* and Regulations if they meet the requirements for exemption from offering statements. However, where an exemption is not available, an offering statement must be prepared and delivered to each prospective purchaser. This offering statement must also be submitted to the Superintendent of Cooperatives at the Financial Institutions Regulation Branch (FIRB) for approval. If FIRB approves the offering statement, it will then issue a receipt for it, and that receipt is required before the Co-op may begin selling securities.

The regulatory process in Manitoba for Co-op securities is designed to allow prospective purchasers to make informed investment decisions while also ensuring that Co-ops can raise their capital from their members and other supporters without undue cost.

In 1999 the Manitoba Securities Commission issued an exemption order allowing Co-ops to sell securities to non-members without being registered under *The Securities Act*. The order sets certain conditions and limitations.

The offering statement is roughly similar to a prospectus, which is receipted by the Manitoba Securities Commission to allow business corporations to make public offerings of securities.

When Is the Co-op Exempt from Offering Statement Requirements?

Co-ops do not need to prepare offering statement under the following conditions:

- Co-op issues shares or accepts member loans for a total price of not more than \$1,000 per member.
- The Co-op has decided, through its bylaws, to issue shares or loan certificates for part or all of a patronage return.
- The Co-op has filed a prospectus for the securities with the Manitoba Securities Commission (the body that oversees the offering of securities for business corporations). A very large Co-op might use this process to access capital in the public markets or to create a market for the resale of its shares. Neither of these options would be available through the offering statement process.

What Needs to be Included in the Offering Statement?

The Cooperatives Act states:

Offering statement

[89\(1\)](#) Before a cooperative issues any shares or other securities, it shall send to the Superintendent, and receive a receipt from the Superintendent for, an offering statement in a form approved by the Superintendent

- (a) that provides a full, true and plain disclosure of all the material facts relating to the shares or securities and the purposes for which the funds to be raised by their issue are to be used;
- (b) that complies as to content with, and otherwise is in accordance with, this Act and the regulations; and
- (c) that is accompanied by such documents, reports and other materials as are required by this Act and the regulations.

This means that the Co-op needs to provide sufficient information to investors to allow them to make a reasonably informed decision about whether or not to invest.

Other sources that can assist Co-ops in drafting offering statements are the requirements under *The Cooperatives Act* and Regulations; a consultant, lawyer and/or accountant with relevant experience.

A Co-op's offering statement must include the following:

- The Co-op's name and the date of incorporation as it is set out in its Articles of Incorporation.
- The address of its head office.
- The name and place of residence of each of its directors and officers as well as the title of each officer.
- A description of the business carried on by the Co-op and its subsidiaries, if any, and the business each of them intends to carry on.
- A summary of the Co-op's most recent business plan, if available.
- A description of the Co-op's capital structure (including its authorized capital and issued capital) and the rights, privileges, conditions and material characteristics of the securities being offered.
- A description of all the rights, privileges, conditions and material characteristics of the securities being offered.
- A description of how the proceeds from the sale of the securities will be used. If the proceeds will be used for investment purposes, a description of the Co-op's investment policy is required. If the proceeds will be used to make an investment in specific businesses, a description of the nature of the businesses, their management and their capital structure is required.
- If the offering is being made in connection with a plan of reorganization, a purchase and sale or an amalgamation, a description of the general effect of these proposed changes and when they will be made. The details of the method of selling the securities and of any commission payable or discount allowable on the sale.
- A description of how the securities will be redeemed is required. (For many Co-ops, the securities that are offered are not available on any market. They are available only through the offering statement process.)
- A statement of the maximum and minimum amount of the offering and, where applicable, the maximum or minimum amount of any subscription. The Co-op must also provide a description of what will happen to the proceeds if the minimum amount of the offering is not raised (e.g., the money raised will not be spent until the minimum is raised or it will be given back to the investors if the minimum is not raised).
- The amount and particulars of any securities, mortgages, bonds, debentures or other debt obligations that must be paid back before the securities are issued.
- A description of any material legal proceedings to which the Co-op or its subsidiary is a party.
- A description of any material interest of any director, officer, or employee of the Co-op or its subsidiary in the operations of the Co-op generally or in the securities being issued.
- A description of every material contract entered into within two years before the date of the offering statement.
- A description of the risk factors of the Co-op or the particular project that the securities will be financing and the risks associated with the securities being offered.
- The amount of dividends, patronage returns or other distributions if they were paid out, or declared and not paid out, at any point in the five years before the date of the offering statement, or since the Co-op's date of incorporation, whichever is the shorter period.

- The name and address of the auditor of the Co-op, if applicable.
- A description of any other material facts.
- The Co-op's financial statements if it has completed a financial year, along with an auditor's report (if required) and interim un-audited financial statements as of a date within 90 days of filing the offering statement.

Other Requirements

The following statement must appear in conspicuous type on the top of the first page of every offering statement.

The Superintendent under *The Cooperatives Act* of Manitoba has not in any way passed upon the merits of the securities offered in this offering statement. Any representation to the contrary is an offence under the laws of Manitoba. Investors should not rely on any information other than what is contained in this offering statement. The information in any projections or pro forma statements contained in this offering statement may vary materially from actual results.

If the offering statement is for issue of securities that may be sold to persons other than members of the Co-op, the following statements must also appear in conspicuous type on the top of the first page of every offering statement.

This offering is being made in reliance on an order exempting the offering from the requirements of *The Securities Act*. The Manitoba Securities Commission has not in any way passed upon the merits of the securities offered and has not reviewed this offering statement. Investors do not have the rights and protections provided in *The Securities Act*.

The following must appear in conspicuous type on the top of a separate page of every offering statement.

RISK FACTORS

The purchase of Shares is subject to a number of risk factors, including but not limited to:

1. **Past Performance.** The Cooperative has been in operation since _____. Past performance is not a guarantee of future success. For a greater understanding of the Cooperative's operation to date, consult the **audited (or other quality)** financial statements for the year ending _____, which forms part of and is a Schedule to this Offering Statement.

2. **No Market.** There is no active market for the Shares. There are resale restrictions under *The Cooperatives Act*. In addition, the Shares may not be readily accepted as collateral for a loan and the disposition of Shares may result in tax consequences. There are restrictions on the transfer and redemption of Shares as described elsewhere in this Offering Statement.

3. **Speculative Investment.** The Shares are speculative securities. An investment in Shares may not be suitable for all investors. An investment in Shares should be considered a long-term investment. There is no guarantee that the Purchaser will earn a specified rate of return or any return in the short- or long-term.

4. No Guaranteed Redemption. There is no guarantee that the Cooperative will be in a financial position to redeem any Shares at any time. The Cooperative is under no obligation to redeem the Shares to the Purchaser. These Shares are risk capital.

5. No Guaranteed Dividends. There is no guarantee that the Purchaser will be paid a dividend. *The Cooperatives Act* prohibits a Cooperative from paying a dividend on Shares if there are reasonable grounds to believe that the Cooperative is, or would after the payment be, unable to pay its liabilities as they become due; or the realizable value of its assets after payment of the dividend would be less than the total of its liabilities and the stated capital of all its issued Shares.

6. Management Track Record and Experience. The Purchaser will be relying on the business judgment, expertise and integrity of the Board and management of the Cooperative. Purchasers who are unwilling to rely on the discretion of management should not purchase Shares. Purchasers should review the Cooperative's projections herein and the attached financial statements.

Lastly, a certificate (usually the last page of the offering statement) must include the following conspicuous type. This statement must be signed by the chair of the board, or the president, as well as, the treasurer - and it must indicate when the certificate was signed by each of them:

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this offering statement as required by section 89 of *The Cooperatives Act*.