

Cooperative Capitalization: Alternatives and Opportunities

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Cooperative Capitalization Alternatives:

- A. Blend of Debt and Equity
- B. Debt Instruments
 - i) Unsecured vs. Secured
 - ii) Short Term vs. Long-Term
 - iii) Revolving vs. Fixed Term
- C. Equity Instruments:
 - i) Membership Shares or Fees
 - ii) Patronage Equities: Base-Capital Plan, Fixed Equity, Allocated vs. Unallocated
 - iii) Unit Retains
 - iv) Preferred Stock

Securities Law Implications:

- A. Are Instruments Securities?
- B. If yes, Registration or Exemption Under Federal and State Securities Laws
- C. Debt Instruments: “Family Resemblance Test” to determine if notes are securities. (Reves case)

Securities Law Implications (cont):

- D. Equity Investments: Foreman case determines when “stock” in a coop is not a security
- Foreman holding and SEC rulings generally mean that membership stock, patronage equities and unit retains are not securities
- E. Preferred Stock is a security, requiring registration or exemption

Federal Securities Exemptions:

- A. Intra-State - Section 3(a)(11)
- B. Section 3(a)(5) exemption for securities offered by §521 Cooperatives
- C. Section 4(2) exemption for transactions not including a public offering
- D. Regulation D Safe Harbor

Regulation D Safe Harbor:

- A. Information Requirements
- B. Limitation or Manner of Offering – NO PUBLIC SOLICITATION
- C. Limitation on resale
- D. Form D Notice filing
- E. 35 or fewer non-accredited investors but UNLIMITED NUMBER OF ACCREDITED INVESTORS

Accredited Investor Status:

A. Individuals: Net worth of more than \$1 million (excluding primary residence and associated debt)

OR

Individual annual income of \$200,000 or income with spouse of \$300,000 in each of past two years

B. Entity: Total assets in excess of \$5 million

OR

All equity owners accredited investors

Public Solicitation Rule Change:

BAN ON PUBLIC SOLICITATION DOES NOT APPLY if:

- A. SALES MADE ONLY to ACCREDITED INVESTORS and
- B. REASONABLE STEPS TO VERIFY ACCREDITED INVESTOR STATUS

Reasonable Verification Steps:

- Tax Records (2 years)
- Bank or brokerage statements for assets plus report from credit agency for liabilities
- Written confirmation from broker-dealer, attorney, C.P.A.

Opportunity for Coops:

- A. Public solicitation of investment without registering with the SEC!
- B. Could be used for either Promissory Notes or Preferred Stock

Secondary Market for Securities:

- A. Private trading platforms expected to develop for shares issued under new rules
- B. Debt instruments – repayment form liquidity
- C. Coop could also establish repurchase programs

SEC Reporting:

- A. For most entities triggered by assets in excess of \$10 million and by ownership of class of securities by
 - i) 2000 Holders of record
 - OR
 - ii) 500 non-accredited holders of record
- B. EXEMPTION: Coops that are “cooperative associations” under Agricultural Marketing Act of 1929
 - i) 1 member, 1 vote
 - ii) Dividends on stock not exceeding 8%
 - iii) Member business exceeds non-member business

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Q & A

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