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The Uniform Limited Cooperative Association Act: An Introduction

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THE UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT: AN INTRODUCTION

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I. HISTORY & THEORY OF COOPERATIVES

A. *Historical Background of Cooperatives*

From the beginning, humans on earth have cooperated with one another to accomplish tasks they could not do alone. Evidence of this is seen in the remains of many anthropologic studies throughout the world. No one knows when the first formal cooperative organization was formed, but it occurred centuries ago.³

Benjamin Franklin was . . . [an] early [proponent] of mutual insurance. In 1751, Franklin and his Union Fire Company met with other Philadelphia fire-fighting companies to discuss the formation of a fire insurance company. Out of those discussions, the Philadelphia Contributionship was formed, which was the first successful fire insurance company in the colonies. . . . In May 1752, the board of directors, of which Franklin was a member, decided to form an insurance company. Members agreed to make equal payments to the contributionship, which would be used to pay for losses any member would sustain [to his property through fire].⁴

One of the earliest cooperative businesses was the Rochdale Equitable Pioneers' Society, founded in England in 1844. In the original group were 28 persons, ranging from flannel weavers to shoemakers. They were individual craftsmen or entrepreneurs who came together . . . to purchase supplies and consumer goods cooperatively. The original subscription was one English pound for one share of stock.

The Rochdale Society took the best ideas developed throughout the history of cooperatives [to that time] and molded them into one set of good business practices

3. See Gene Ingalsbe & Frank Groves, *Historical Development* in COOPERATIVES IN AGRICULTURE 106 (David Cobia ed., 1989); Olivia Judson, *The Selfless Gene*, ATLANTIC MONTHLY, Oct. 1, 2007, at 90.

4. PBS, *Citizen Ben: Insurance Ben-efactor*, http://www.pbs.org/benfranklin/13_citizen_insurance.html.

and policies⁵ that, 150 years later, [have] evolved into principles of cooperatives. These principles distinguish cooperatives from noncooperative businesses . . .

. . .

Although outdated in many respects, they are still considered first expressions of modern cooperative principles.

. . .

A cooperative *principle* is an underlying doctrine or tenet that defines or identifies a distinctive characteristic. It clearly sets the cooperative apart from other businesses. (And as [John] Milton said, "A good principle, not rightly understood, may prove as harmful as a bad principle.")

A cooperative *practice* is an action that supports, complements, or carries out a principle. The practice is particularly important for a cooperative to achieve success, yet it is not necessarily unique to cooperatives.⁶

Aside from mutual insurance companies, much of the lore and law regarding cooperative organizations in the United States has developed in agricultural cooperatives. Principles essential to the cooperative movement in American agriculture evolved from the efforts of the Rochdale Society. Important roles in the development of principles were played by the National Grange (Patrons of Husbandry) following the Civil War and the International Cooperative Alliance (ICA), established in 1930.⁷ Application of the principles to the organization of cooperatives in agriculture was pursued in the Midwest and Rocky Mountain

5. The Rochdale Policies and Practices were:

- * Open Membership
- * One member, one vote
- * Cash trading
- * Membership education
- * Goods sold at regular retail prices
- * Limitation on the number of shares owned
- * Net margins distributed according to patronage
- * Dividend on equity capital is limited
- * Equity is provided by patrons
- * No unusual risk assumption
- * Political and religious neutrality
- * Equality of the sexes in membership

6. Tammy M. Meyer, *Understanding Cooperatives: Cooperative Business Principles*, Cooperative Information Report 45, Section 2 (USDA Rural Bus. Cooperative Inst.), Reprinted Jan., 1999, at 1-2 (emphasis added). Other commenters have used slightly different categories. See, e.g., David Barton, *Principles*, in COOPERATIVES IN AGRICULTURE 21, 23 (David Cobia ed., 1989).

7. DONALD B. PEDERSEN & KEITH G. MEYER, *AGRICULTURAL LAW IN A NUTSHELL* 274 (1994).

regions of the country by the Farmers Union that sponsored the development of many agricultural cooperatives in the 1930s and 1940s.

Over the last 150 years, principles of cooperation have been applied to cause cooperatives to be a unique form of business organization (usually incorporated), characterized by four basic principles:

1. democratic ownership and control by users;
2. limited returns on capital;
3. return of benefits or margins to users on the basis of use;
4. the obligation of user-owner financing.⁸

The first principle translates into one member, one vote regardless of the magnitude of a particular member's patronage or stock purchases. Many state cooperative statutes continue to require observance of this principle. Where permitted by pertinent state law, some cooperatives base voting in part upon volume marketed or some other measure of business done with the cooperative. [Some] [s]uch statutes [as well as some regulatory statutes] limit the power of a single member by allowing no one member to cast more than a small percentage of total qualified votes, 3%, for example.⁹

The principle requiring limits on the return on investment capital has been codified in many state[s]. Typically, 8% is the maximum. The Capper-Volstead Act, . . . sets a maximum dividend rate on capital stock of 8%. And, limits on dividends on capital stock appear in [other] federal tax statutes [as well] The underlying principle is that agricultural cooperatives are not deemed to be vehicles for investment for profit. Rather, the emphasis is on members cooperating to achieve common business goals.¹⁰

8. These principles are sometimes referred to as "primary principles." Marvin A. Schaars, *Basic Principles of Cooperatives: Their Growth and Development*, in AGRICULTURAL COOPERATION 183, 189 (Martin A. Abrahamsen & Claud L. Scroggs, eds., 1963); JAMES B. DEAN, *THE PRACTITIONER'S GUIDE TO COLORADO BUSINESS ORGANIZATIONS* § 11.1 (2007). Professor Barton concluded his Chapter on principles, in part, as follows:

Cooperative principles have evolved over the last century and a half, beginning with the Rochdale principles. For purposes of discussion we have identified four distinctive classes of principles: (1) Rochdale, (2) traditional, (3) proportional, and (4) contemporary. Current practice is most closely aligned with traditional and contemporary principles. Many believe that further evolution will or should occur if cooperatives are to continue as effective economic institutions.

Barton, *supra* note 6, at 32-33.

9. This is sometimes known as proportional voting, and proponents of proportionality have coalesced a set of cooperative principles based on it. See Barton, *supra* note 4, at 29-30; 7 U.S.C. § 291 (2006).

10. PEDERSEN & MEYER, *supra* note 7, at 275 (citations omitted).

The principle of returning benefits to users on the basis of use is that monies accumulated in excess of net operating costs, “savings” or “margins” as they are often called within the industry, are refunded to members in accordance with patronage.¹¹ In other words, the goal of a cooperative is to maximize the interests of its members as it transacts its business. To accomplish this, cooperatives market the commodities of patrons at the highest possible prices, and buy quality inputs at the lowest possible prices. Operating costs are minimized, but not at the sacrifice of the best business practices. The resulting savings or margins belong to the patrons and are refunded to them at least annually, though not necessarily in cash.¹² A cooperative may retain portions of the patronage savings or margins allocated to members and use them to provide capital for the cooperative to help finance ongoing operations.¹³

Some commonly known food products bearing names such as Sunkist and Ocean Spray, are produced and distributed by cooperative organizations. Ace, Our Own, and True Value hardware stores were developed as cooperatives. Some owners of fast food franchises purchase their supplies through purchasing cooperatives. Mutual insurance companies and credit unions are cooperatives. In 1992, nonprofit and governmental organizations in Eagle County, Colorado, organized the Eagle Valley Family Center on a cooperative basis, to provide mutual support on a coordinated basis in addressing health and human services needs and programs in the county.¹⁴

There is, however, no single type of cooperative. Although much of the law that has developed around cooperatives has developed with respect to agricultural cooperatives, cooperatives exist in many areas beyond those already mentioned, including housing, insurance, banking, health care, and retail sales, among others.

There, too, are particular statutory benefits for particular types of cooperatives. For example, Section 1042 of the Internal Revenue Code¹⁵ “provides special tax treatment for an employer who sells his/her/its business to the employees who form a worker owned cooperative to acquire the stock in the employer’s corporation (or where the owner converts the corporation into a worker owned cooperative).”¹⁶

11. *Id.*

12. *Id.* at 279.

13. *Id.* at 279-80.

14. Ry Southard, *The Rural Heartbeat: Health Network Enhances Services in Mountain Community*, RURAL COOPERATIVES, May/June 1996, at 32, available at http://www.uwcc.wisc.edu/info/farmer/pre2001/63_3_32.html.

15. 26 U.S.C. § 1042 (2006).

16. Memorandum from Peter Langrock, Chair of the Uniform Limited Cooperative Associations Act (ULCAA) Drafting Committee, to Committee Members, Advisor, and Observers,

Different types of cooperatives, or cooperatives in different industries, may view cooperative principles in differing ways. Principles relating to cooperatives may need to be varied in different situations.¹⁷ A partial list of the myriad types of cooperatives is set forth below.¹⁸

As Abraham Lincoln said, “important principles may and must be flexible.”¹⁹ Similarly, in the context of the definition of “cooperative” for statutory purposes, Justice Brandeis, in a frequently quoted passage from a *dissent* joined by Justice Holmes, stated:

That no one plan of organization is to be labeled as truly co-operative to the exclusion of others was recognized by Congress in connection with co-operative banks and building and loan associations. With the expansion of agricultural cooperation it has been recognized repeatedly. . . . And experts in the Department of Agriculture, charged with disseminating information to farmers and Legislatures, have warned against any crystallization of the co-operative plan, so as to exclude any type of co-operation.²⁰

The *Frost* case and its dissent discussed the definition of a cooperative for purposes of a statutory exemption for “cooperatives” under a public utility statute in Oklahoma. The statute required, in effect, a certificate of need in order to build and operate a cotton gin.²¹ The original cotton gin public utility statute was passed in 1915. There was no exception for cooperatives, and a for-profit cotton gin, apparently organized as a sole proprietorship, was licensed under the statute in Durant, Oklahoma.²²

In 1917 Oklahoma adopted a cooperative statute two years after the cotton gin statute was adopted. It provided for the formation of non-stock, not-for-profit agricultural cooperatives “for the purpose of mutual help by persons engaged in agriculture or horticulture.”²³ It is unclear whether this cooperative sta-

ULCAA Drafting Committee, Addendum C, 2 (November 1, 2006), *available at* http://www.law.upenn.edu/bll/archives/ulc/uarca/2006november_langrockmemo.pdf.

17. *See id.*

18. Common categories of cooperatives include: Marketing Cooperatives, Advertising Cooperatives, Bargaining Cooperatives, Processing Cooperatives, Purchasing Cooperatives, Consumer Purchasing Cooperatives, Wholesale Buying Cooperatives, Service Cooperatives, Worker Owned Cooperatives, Housing Cooperatives, Real Estate Cooperatives, Mutual Insurance Companies, Credit Unions, Utility Cooperatives (including Rural Electric Associations and Rural Telephone Companies), Mutual Ditch Companies, Mutual Cemetery Companies, Investment Cooperatives and Financial Planning Cooperatives.

19. MEYER, *supra* note 6, at 4.

20. *Frost v. Corp. Comm'n*, 278 U.S. 515, 546 (1929) (Brandeis, J., dissenting) (citing *U.S. v. Cambridge Loan & Bldg. Co.*, 278 U.S. 55 (1928)).

21. *Id.* at 517.

22. *Id.* at 517-18.

23. *Id.* at 518.

tute provided limited liability protection. In 1919 an enabling act for another kind of cooperative was adopted which allowed “10 or more persons . . . [to] form a corporation for the purpose of conducting, among others, an agricultural or horticultural business upon a co-operative plan.”²⁴ Under the statute:

A corporation thus formed is authorized to issue capital stock to be sold at not less than its par value. The number of shares which may be held by one person, firm or corporation is limited. Dividends may be declared by the directors at a rate not to exceed 8 per cent. [sic] per annum. Provision is made for setting aside a surplus or reserve fund, and 5 per cent. [sic] may be set aside for educational purposes. The remainder of the profits of the corporation must be apportioned and paid to its members ratably upon the amounts of the products sold to the corporation by its members and the amounts of the purchases of members from the corporation; but the corporation may adopt by-laws providing for the apportionment of such profits in part to nonmembers upon the amounts of their purchases and sales from or to the corporation.²⁵

The final piece of legislation relevant to the case was adopted in 1925. It amended the 1915 cotton gin/certificate of need statute by exempting cooperative gins from the certificate of need analysis if the cooperative gin: (1) was “to be run co-operatively”; and (2) a petition for the gin was signed by “(100) citizens and taxpayers of the community.”²⁶

The “for-profit” gin, formed before the 1917 or 1919 cooperative acts and the 1925 amendment to the certificate of need statute, brought suit under the Fourteenth Amendment (equal protection) and won (7-2). The majority determined “the Corporation Commission is without power to issue permits to corporations organized under the act of 1919 [the “corporate” cooperative act] without a showing of public necessity.”²⁷ The majority reasoned that the 1919 cooperative statute “is in no sense a mutual association,”²⁸ and concluded that the cooperative provisions in the “corporate” cooperative act were mere window-dressing that lacked “both relevancy and substance.”²⁹ Therefore, the Court determined

24. *Id.*

25. *Id.*

26. *Id.* at 517 (quoting 1925 Okla. Sess. Laws (Comp. Stat. 1921 § 109)).

27. *Id.* at 528.

28. *Id.* at 524. The Court continued by stating:

Like its individual competitor, it does business with the general public for the sole purpose of making money. Its members need not even be cotton growers. . . . The provision for paying a portion of the profits to members or, if so determined, to nonmembers, based upon the amounts of their sales to or purchases from the corporation, is a device which, without special statutory authority, may be and often is resorted to by ordinary corporations. . . .

29. *Id.*

the corporate cooperative exemption as applied to the 1919 act created separate rules for corporations and individuals without a permissive regulatory purpose violative of equal protection.³⁰

Nonetheless, the exception for cooperatives formed under the 1917 law was severed in dicta: "As applied to corporations organized under the 1917 act, we have no reason to doubt that the classification . . . might properly be upheld."³¹ Thus, *Frost* stands for the propositions that (1) not all cooperatives are cooperatives for all regulatory purposes and, (2) conceptions of cooperatives and their principles may evolve over time for different purposes.

Both propositions are neatly illustrated by a comparison of the 1919 Oklahoma corporate cooperative principles and those articulated in other regulatory law. For example, the Capper-Volstead Act, adopted seven years prior to *Frost*, provides a limited anti-trust exemption for "persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers [who] may act together in associations, corporate or otherwise," and conduct certain collective activities so long as they are "operated for . . . mutual benefit."³² The operative provisions are: (1) "That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members" and *either* (2) each member has one vote, *or* (3) dividends on stock or membership capital are no more than eight percent.³³

Obviously Capper-Volstead has limits and restrictions not recited by the Court concerning the 1919 Oklahoma corporate cooperative act. Nonetheless, its plain language belies flexibility in defining the organizations it protects.³⁴ Further, on one hand, for purposes of federal income taxation under Subchapter T of the Internal Revenue Code it seems "that the obligation to pay patronage refunds is the predominate characteristic of a cooperative."³⁵ Indeed under this tax provision the IRS has conceded that a cooperative may operate on a cooperative basis even when more than half its business is conducted with nonmembers.³⁶ On the other hand, electric and telephone cooperatives are taxed for federal income tax purposes under IRC section 501(c)(12), which requires eighty-five percent of their income to come from members.³⁷

30. *Id.* at 528.

31. *Id.* at 523-24 (citations omitted).

32. Capper-Volstead Act, 7 U.S.C. § 291 (2006).

33. *Id.*

34. For a concise discussion of the Capper-Volstead exemption and whether a new statutory cooperative will qualify *see* James R. Baarda, Cooperative Programs, Rural Development, USDA, Current Issues in Cooperative Finance and Governance, April 2006, at 151-54.

35. *Taxation of Cooperatives*, Tax Mgm't (BNA) No. 744, at A-4 (Aug. 12, 2002).

36. *Id.*

37. *Id.*

Further, by way of illustration, the Farm Credit Act of 1971 defines cooperatives for purposes of eligibility to borrow from Banks for Cooperatives. While generally similar to the Capper-Volstead requirements, it also provides that “[a]t least 80 percent (60 percent in some specific instances) of the voting control of the association must be held by farm or aquatic producers, or associations of such producers.”³⁸ This leaves room for voting members who are not “producers.” Finally, for purposes of federal income taxation under Subchapter T, the organization must be classified as a corporation for tax purposes, but not necessarily organized as a corporation under state law.³⁹

This cursory overview of the history of cooperative principles and a few select tax and regulatory provisions seems to indicate a few things. *First*, cooperatives exist and they are principle based organizations that are different from other organizations. *Second*, the principles may be articulated several ways and are multi-dimensional. *Third*, different laws with specific purposes and the industry within which a particular organization operates articulate the dimensions of the definition for those laws and the metric used for measuring the standard for the definition.

B. Recent History & Trends

In Minnesota, North Dakota, and Wisconsin, more than fifty cooperative ventures, often called New Age cooperatives, were formed by agricultural producers in the 1990s to obtain for themselves a portion of the value normally added by others to agricultural products at the various stages of processing in the food distribution chain.⁴⁰

The New Generation cooperative model has gained features that distinguish it from more “traditional” cooperatives, including: (1) equity accumulation programs based on substantial up front investments by patron-members, (2) a tie-in between equity investment and the right and obligation to deliver a specified quantity of product to the cooperative each year, and (3) a right of patron-members to transfer their equity to another person eligible to become a patron-member at whatever price is acceptable to both parties.⁴¹ While traditional coop-

38. Donald A. Frederick, USDA, Cooperative Information Rpt. 44, pt. 1, Income Tax Treatment of Cooperatives: Background 58 (2005).

39. See *id.* at 30-31.

40. See Michael L. Cook & Constantine Iliopoulos, *Beginning to Inform the Theory of the Cooperative Firm: Emergence of the New Generation Cooperative*, 4 FINNISH J. OF BUS. ECON. 525, 526, 529 (1999).

41. UNIF. LTD. COOP. ASSOC. ACT Prefatory Note, 2 (2007).

eratives usually seek to maximize membership, New Generation cooperatives are closed-end with a limited number of members.⁴²

Although it may be a close relative to the traditional marketing cooperative, the New Generation cooperative is markedly different in several respects.

...

[A] New Generation farmer cooperative is a value-added cooperative that processes or otherwise converts the raw agricultural products of its members into one or more higher-valued products.

...

[The] formation is motivated by the desire to develop new value-added products and to gain access to an increased share of the consumers' food dollar. To the extent that they are successful, therefore, these cooperatives can increase the wealth of their members. They also have the potential for adding wealth to the communities in which they are located by creating new employment opportunities in their facilities. In sum, New Generation cooperatives are commonly viewed as instrumental in rural development.⁴³

A difficulty some cooperative organizations have had has been finding adequate capital for their operations.⁴⁴ This has limited their ability to grow their operations. It also has kept the cooperative form of business from being a recognized form of business within the investor public.

Of course, capital formation is at least somewhat dependent on the industry in which a cooperative operates. In some industries there exist specialized quasi-governmental debt sources. For example, the Farm Credit Administration includes banks for cooperatives which loan to cooperatives meeting eligibility criteria⁴⁵ and "[t]hrough the Electric Programs, the Federal government is the majority noteholder for approximately 700 electric systems borrowers in 46 states."⁴⁶ As recently written by Paul Hazen, President and Chief Executive Officer of the National Cooperative Business Association:

42. *Id.* at 5.

43. Christopher R. Kelley, *New Generation Farmer Cooperatives*, AGRIC. LAW UPDATE (Am. Agric. Law Ass'n., Eugene, Or.), June 2000, at 4.

44. Harold Hedges, *Financing Farmer Cooperative*, 33 JOURNAL OF FARM ECONOMICS 918, 918 (1951).

45. 12 U.S.C. § 2129(a) (2006).

46. USDA, USDA Rural Development's Electric Programs, www.usda.gov/rus/electric/ (last visited Apr. 10, 2008). Interestingly, the international cooperative movement is very cautious about encouraging too much government involvement with cooperatives because, at some point, it *could* compromise the principle of independence, which is sometimes called "self-determination." According to one source: "[t]his principle embraces that of cooperative autonomy, meaning that

I have often thought more people don't know about co-ops because they have not been directly exposed to them and they don't have the opportunity to invest in them.

Concerning investment, only a limited number of co-ops have developed a way to attract investors they need. So NCBA is exploring an equity fund for co-ops that would attract mainstream investors who want to align themselves with co-op values. From my vantage point, there could be no better time to spread the word about why the co-op model is the better business model and to bring us the resources we need to grow.⁴⁷

Desiring to pursue a value added cooperative operation, lamb growers in Wyoming looked for a means to bring capital into a marketing and processing enterprise. With the efforts of Mark Hanson, then with the Minneapolis law firm of Lindquist & Vennum PLLP, a new approach to capitalizing cooperatives was crafted into a new form of cooperative statute.⁴⁸

There have been other recent developments using cooperatives in multi-entity structures, especially, and anecdotally, in the ethanol industry. This structure combines the use of a cooperative, either traditional or "new generation," with another group or entity in a joint venture. The other group or entity provides financing, and the joint venture agreement provides for fees and allocations of profits and losses. According to a testimonial on the Farm Credit Council website, the National Council of Farmer Cooperatives (NCFC) recently completed a member survey. It quoted the president and CEO of NCFC as stating: "We were struck by the number of co-ops using other structures beneath the co-op umbrella." Further: "You have LLCs, partnerships, joint ventures and other strategic alliances. Most often it's to acquire added equity capital."⁴⁹

cooperatives should be allowed to regulate their internal affairs free of outside influence, be it by the government or any other agent." HENRY HAGEN, GUIDELINES FOR COOPERATIVE LEGISLATION 4 (Joan Macdonald ed., 2d rev. ed. 2005). Of course other agents also include outside equity holders.

47. Paul Hazen, *Our View from the CEO: The Bottom Line, Redefined*, COOP. BUS. J., May/June 2007, at 2. (on file with author).

48. Shermain D. Hardesty, Rural Coop. Ctr., Univ. Cal., Davis, Dept. of Agric. and Res. Econ., *New State Statutes Allow Nonmember Equity Capital for Cooperatives*, http://www.cooperatives.ucdavis.edu/reports/report_pdf/wyoming.htm. See WYO. STATS. ANN. §§ 17-10-201 to 17-10-253 (2008).

49. Farm Credit Council, *Iowa Farmers Find a New Way to Build an Ethanol Plant*, available at <http://www.fccouncil.com/uploads/CoBank%20Testimonial.pdf>. The same story quoted Dave Holm, executive director of the Iowa Institute for Cooperatives, who worked toward a passage of a new Iowa co-op law that took effect in 2005. The article further noted that "Minnesota, Wyoming and Tennessee also recently passed laws allowing for a new type of co-op structure where farmers can bring in outside equity." *Id.* These are the laws upon which ULCAA is based. See UNIF. LTD. COOP. ASSOC. ACT, Prefatory Note (2007).

A 2004 article in the *Rural Cooperative Magazine*, published by the USDA, recounted how a cooperative in South Dakota faced and solved the start-up equity puzzle on an ethanol plant. Ultimately, the co-op used an LLC (Glacial Lakes Capital, LLC) to raise local funds from nonproducers. Equity needs required Glacial Lakes to move away from a strict farmers' "co-op model."⁵⁰

Since the first Wyoming statute authorizing a new form of cooperative, additional statutes for the same purpose have been adopted in Minnesota,⁵¹ Tennessee,⁵² Wisconsin,⁵³ Iowa⁵⁴ and Nebraska.⁵⁵ These statutes will be referred to generally in the following discussion as the "new state" cooperative statutes.

II. BACKGROUND OF THE UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

As a result of the interest expressed by the adoption of the new state cooperative statutes, in those states and elsewhere, the National Conference of Commissioners on Uniform State Laws (NCCUSL) undertook to develop a uni-

50. Steve Thompson, *Community Investments Helped Launch Plant in RURAL COOPERATIVES: FUELING A RURAL REVIVAL* (USDA/Rural Dev.), July/Aug 2004, 21, available at <http://www.rurdev.usda.gov/rbs/pub/jul04/jul04.pdf>. The article is worth quoting at greater length:

As usual for new business ventures, the stumbling block was financing. The plant was projected to cost \$54 million, and to obtain financing from lenders, the co-op needed to raise at least \$20 million. Even the smaller amount was far more than local farmers could come up with. The co-op looked into partnerships with corporations and other entities, but soon ran into issues over who would control the operation.

Says Tom Branhan, the current general manager, "The problem was, they wanted management of the plant as part of the deal." The co-op members weren't ready to accept being, as they saw it, passive spectators in their own operations.

The alternative was raising the funds from individuals, not necessarily farmers — but this meant moving away from a strict farmers' co-op model. The co-op began an equity drive in March 2001, making available shares of common stock in a new entity: Glacial Lakes Capital, LLC.

To keep the venture from becoming a South Dakota firm in name only, ownership of shares was limited to residents of the state, and the equity drive concentrated on members of the local community.

51. Minnesota Cooperative Associations Act, MINN. STAT. §§ 308B.001-308B.975 (2007).
52. Tennessee Processing Cooperative Law, TENN. CODE §§ 43-38-01 to 43-38-1109 (2007).
53. Wisconsin Cooperative Associations Act, WIS. STAT. §§ 193.001-193.971 (2007).
54. Iowa Cooperative Associations Act, IOWA CODE §§ 501A-501A.1216 (2008).
55. Nebraska Limited Cooperative Associations Act, NEB. REV. STAT. §§ 21-2901 to 21-29,134 (2007).

form law to provide a pattern for uniformity among the states desiring to adopt similar statutes. A drafting committee was formed. The members of the committee, with an American Bar Association advisor and observers from the cooperative community providing input, developed a draft law. On August 2, 2007, at its annual meeting, Commissioners from fifty states and territories in attendance voted unanimously to recommend the Uniform Limited Cooperative Association Act [hereinafter the Act or ULCAA] to the states for adoption.⁵⁶

This Act would not replace any existing state co-op laws. Rather, it would be a free-standing statute to fill a different niche in the cooperative economic ecosystem just as cooperative enterprises fill a niche in the general organizational ecosystem. Thus, some provisions of the Act differ markedly from the more corporate-like framework of existing traditional cooperative statutes. A limited cooperative association formed under this Act is intended to provide an unincorporated cooperative structure with centralized management but democratic member control as an alternative to a limited liability company, which has been a form of business many have turned to when the traditional cooperative form of business entity has not been receptive to outside investments.⁵⁷

The new state cooperative statutes and the Act provide for an unincorporated entity to be formed with both traditional patron members and investor members. In selected ways, “investor members” are similar to limited partners in a limited partnership formed under the Uniform Limited Partnership Act (2001). Nonetheless, the Act seeks to provide an alternative which accounts for cooperative principles to a *greater* extent, with *less* room for design abuse, and with more transparency to patron members than can be engineered by using a combination of entities to find equity investment. Finally, although some features of the limited cooperative association are very similar to the features of other entities, and descriptive analogies to other entities may be helpful, it is imperative to understand that the limited cooperative association – as are all cooperatives – is a unique entity with important distinctions from other entities to which it may be compared.⁵⁸

An overarching question raised by the NCCUSL project was what it means to be a cooperative. Older traditional statutes have answered this by finding the definition of a cooperative in other law or by stating that the cooperative

56. Press Release, National Conference of Commissioners on Uniform State Laws, New State Law Now Available on Limited Cooperations (Aug. 2, 2007), *available at* <http://www.nccusl.org/Update/DesktopModules/NewsDisplay.aspx?ItemID=186>. As of April 15, 2008, the Act had been adopted in Utah and was under consideration in Oklahoma and Washington, D.C.

57. UNIF. LTD. COOP. ASS'N ACT, Prefatory Note, 1.

58. *Id.* at 1-2.

must be operated pursuant to a “cooperative plan,” or on a “cooperative basis,” terms that are somewhat ambiguous even within the cooperative world.⁵⁹

The definitions of these terms have evolved over time, at least on the margin (and concerning select issues). For example, in 1973 the Internal Revenue Service changed its interpretation on the issue of whether operating on a cooperative basis required more than fifty percent of the cooperative’s business to be done with members on a patronage basis.⁶⁰

The Act provides an unincorporated and flexible organizational structure buttressed and combined with “cooperative principles and values in order to obtain increased equity investment opportunity for capital intensive and start-up cooperative enterprises.”⁶¹ It is an alternative to other cooperative and unincorporated structures already available under state laws. It is also another statutory option providing a flexible breastwork of mandatory and default rules that are grounded in cooperative values and member governance. The flexibility in this Act necessarily means that much of it is not “hard-wired” to assure that it will be qualified as a cooperative, for example, under various provisions of federal law.

On the other hand, to the extent it is already possible to qualify as a “cooperative” for purposes of other laws without being organized as a traditional state law cooperative, other flexible forms of business organizations – such as the limited liability company (LLC) – may be used for cooperative purposes. “[The] Act, however, provides an efficient default template that encourages planners to utilize tested cooperative principles that reflect traditional cooperative values at a deeper level than provided in those other organizational structures.”⁶² Moreover, it is intended that limited cooperative associations may qualify as partnerships for tax purposes under the “check-the-box” regulations, giving organizations based on cooperative principles more planning flexibility.⁶³

In providing for an unincorporated organizational structure, the Act draws on concepts and provisions from the Revised Uniform Partnership Act (1997), the Uniform Limited Partnership Act (2001), nonprofit corporation statutes, and traditional corporate forms of state cooperative statutes.⁶⁴ At the same time, the Act draws heavily on cooperative principles and values. A key section regarding cooperative values is Section 104, captioned “Nature of Limited Cooperative Association,” that with other parts of the Act, addresses the values of vo-

59. *See id.* § 1004 cmt.

60. Rev. Rul. 93-21, 1993-1 C.B. 188 (stating that the fifty percent threshold is unnecessary).

61. UNIF. LTD. COOP. ASS’N ACT, Prefatory Note, 1.

62. *Id.*

63. *See generally* Treas. Reg. §§ 301.7701-2, 301.7701-3 (2008).

64. UNIF. LTD. COOP. ASS’N ACT, Prefatory Note, 2-3.

luntary membership, member economic participation, and autonomy and independence; although autonomy must be placed within the practical context of long-term debt and equity.⁶⁵ Voluntary membership remains voluntary because the Act requires consent of the participants to become members.⁶⁶ Open membership has been compromised under both traditional cooperative statutes and the new state cooperative statutes, and remains so in the Act in order “to allow (but not require) the formation of ‘closed’ cooperatives.”⁶⁷ Closed cooperative structure is necessary if patron members wish to share in the increased value of their equity and to provide member liquidity.⁶⁸ This allows a business formed in conformance with cooperative values to be more attractive.

Section 1004, captioned “Allocations of Profits and Losses,” “expressly provides for the values of member economic participation; education, training and information; and cooperation among cooperatives. One of the key balancing points of the Act concerns ‘democratic member control.’”⁶⁹ Sections 405, 511(a) through 512(a), 514, 804, and 816(a) (as well as other voting provisions on fundamental changes) all concern this trade-off.⁷⁰ “Concern for community” is directly addressed in Section 820 and varies the law generally applicable to corporate directors “to allow the directors of a limited cooperative association to consider cooperative principles as well as a number of community constituencies in making decisions.”⁷¹

Importantly, the Act is flexible enough to form a limited cooperative association which operates like a traditional cooperative. “In sum, this Act expressly considers [the] important traditional cooperative values and provides reasoned departures from those values only where necessary for purposes of [the] Act.”⁷² The Act is intended to expand the use of entities recognizing cooperative principles.

Unlike pure for profit organizations, where the objective is to earn profits for those who invest in them, or not for profit organizations, whose activities are often focused on providing for third parties, a cooperative’s organizational structure and its activities are focused on its members. Members are the foundation of a cooperative organization. They organize it. Their support, through patronage and capital investment, keeps it economically healthy, and their changing re-

65. *Id.* at 5-6.

66. *Id.* at 5.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 5-6.

72. *Id.* at 6.

quirements shape the cooperative's future. Specific rights and responsibilities are set forth under the law governing the cooperative's organization, and are provided in the cooperative's articles of organization and bylaws.⁷³ Indeed, a traditional cooperative's articles of incorporation and bylaws have been considered to be contractual in nature.⁷⁴ For example, it has been held that propositions represented in valid bylaws are as binding on the members of a cooperative as if included in a marketing contract. Where the place of performance of a marketing contract is stated in a bylaw by which the member has agreed to be bound, it is as effectual as though it were stated in the marketing contract.⁷⁵ In this limited way, traditional cooperatives are closer to unincorporated entities based on contract than to "public" business corporations.

III. AN OVERVIEW OF THE UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT

A. Title

The title of the Act is intended to differentiate it from traditional state cooperative statutes. "Limited" is intended to signal that the Act provides a means for organizing a cooperative entity that may not be completely the same as an entity organized under a corporate style traditional cooperative statute, although a traditional cooperative could be organized under the Act.⁷⁶ "Associa-

73. The Act specifically utilizes the term "articles of organization" due to the unincorporated nature of the entity. UNIF. LTD. COOP. ASS'N ACT. § 102 cmt.

74. *Id.* § 601 cmt.

75. *Id.* (citing *State v. St. Cloud Milk Producers' Ass'n*, 273 N.W. 603 (Minn. 1937)). See FARMER COOP. SERV., USDA, LEGAL PHASES OF FARMER COOPERATIVES 65-67 (4th ed. 1976). Failure to adopt bylaws within the time provided by statute may not be used as a defense to a suit brought by an association against a member on his contract. *Tenn. Cotton Growers Ass'n v. Hanson*, 2 Tenn. App. 118, 130-31 (App. Ct. 1926); *Boyle v. Pasco Growers Ass'n Inc.*, 170 Wash. 516, 519-30 (1932); see also *Frederick*, *supra* note 38, at 60-61. An invalid bylaw creates no liability, but if not opposed to public policy, is generally enforced as a contract between the members and between the corporation and its members. For example, if the members of an association adopt what purports to be a bylaw, but which is void for the reason that the association is not empowered by the law of the State in which it is incorporated or by its charter to adopt the particular bylaw, it will, as a general rule, be enforced as a contract among those members who voted for it or consented to it. *Strong v. Minneapolis Auto. Trade Ass'n*, 186 N.W. 800, 801-02 (Minn. 1922); *New England Trust Co. v. Abbott*, 38 N.E. 432, 433 (Mass. 1894); *Searles v. Bar Harbor Banking & Trust Co.*, 145 A. 391, 393 (Me. 1929). A bylaw providing for the forfeiture of the stock of members for failing to deliver their commodities to an association has been upheld as a contract. See *Bessette v. St. Albans Coop. Creamery, Inc.*, 176 A. 307, 309-10 (Vt. 1935).

76. UNIF. LTD. COOP. ASSOC. ACT § 101, 102(6) cmt.

tion” is intended to signify that an entity organized under the Act is not an incorporated entity, but rather has attributes of an unincorporated entity.⁷⁷

B. Principles and Values

Although the Act is not the same as a traditional state cooperative statute, it may go further than some of those statutes in endeavoring to set forth in legislative form attributes of the cooperative form of doing business.⁷⁸

Section 104 of the Act draws on traditional cooperative principles of voluntary membership, “persons united” in an organization owned by them “through a jointly owned enterprise” where governance is democratically controlled by the members (primarily controlled by those persons) for their mutual benefit “to meet their mutual interests.”⁷⁹ Section 113(a) also emphasizes the “voluntary” nature of participation in an entity organized under the Act by stating that “[t]he relations between a limited cooperative association and its members are consensual.”⁸⁰ Thus, a limited cooperative association is similar to unincorporated entities that are characterized by contractual relationships, such as limited liability companies and partnerships.

Section 104 recognizes that two types of members may be present in a limited cooperative association.⁸¹ This varies an association organized under this Act from traditional cooperative organizations by combining patron owners of the association with investor owners.

During the period when the Act was being drafted, an article in the Cooperative Business Journal by the Executive Director of the National Housing Cooperative Association called attention to the opposition of some traditional cooperative organizations to bringing investors into the membership of a cooperative and the response of the chair of the Drafting Committee, Peter Langrock, to the opposition:

The model law is being written by National Conference of Commissioners of Uniform State Laws.

...

[This] model law would create a class of businesses that is a cross between a co-op and a limited liability company. While the law would not affect co-ops that area

77. *Id.* § 101.

78. *Id.* at Prefatory Note, 1-2.

79. *Id.* § 104.

80. *Id.* §113(a).

81. *Id.* §104(a).

[sic.] already up and running, those planning future co-ops could choose which law to organize under, a traditional co-op law or a law based on the model law. The goal is to make it easier for co-ops to attract investment capital.

...

The . . . model law would give . . . investors substantial income and governance rights in the new business, even though they do not purchase goods or services from it. This has triggered strong objections from some co-op leaders, who argue the law alters the basic definition of a co-op.

...

[Peter] Langrock, of Burlington, Vt., said, 'There has to be a compromise of traditional cooperative values if we are to accomplish the ability of cooperatives to raise additional capital.'

Langrock [also] said there is demand for statutes authorizing the new "limited co-ops."⁸²

In fact, with there being no one particular model of a cooperative organization, it can be questioned how much the Act actually departs from cooperative principles and values that lie at the base of all cooperative organizations, especially cooperatives used as part of multi-entity combination structures. Certainly, the Act specifically states principles of cooperation in Section 104, and in less direct ways throughout the Act.

C. Structure of the Act

The Act contains both mandatory and optional provisions. Mandatory provisions were determined by the Drafting Committee to be provisions that are necessary to provide an organization, that cannot be varied so as to change the broad basic structure of the organization to maintain a balance between patron members and investor members, and to provide protection for patron members.⁸³ Provisions that may be varied by the organizers and members of an association, and drafters of the organic documents for an association, are frequently signaled by the words "unless otherwise provided by the organic rules."⁸⁴ In some of those provisions there are limitations ("floor," "ceilings," or both) on the flexibility. In others, the Act's language may not be necessary to provide flexibility, but

82. Douglas Klein, *Co-op Organizations Press Case For Changes in Model State Law*, COOP. BUS. J. September/October 2006, at 3, 5.

83. UNIF. LTD. COOP. ASSOC. ACT §§ 402 cmt., 804 cmt., 1004(c) cmt.

84. *Id.* § 113 cmt.

was included for clarity or emphasis.⁸⁵ Variable provisions are also listed in Section 113 of the Act that specifies which provisions of the Act may be varied only in the Articles of Organization, and which provisions may be varied in either the Articles or the Bylaws.⁸⁶ With respect to provisions expressly identified in the Act that may be varied, it provides default rules that will provide results in areas where variations are generally not made by those creating an association under the Act.

Because the Act does not provide default rules for contributions to an association's capital, subsection 113(d) requires the organic rules to provide for contributions.⁸⁷ There is, however, no statutory penalty if the method for providing contributions is not set forth in the organic documents.⁸⁸ The penalty for failing to deal with this important subject is the confusion that would result in member financial relationships, in financial reporting, and in tax results.

The Act draws from both traditional corporate model cooperative statutes and unincorporated entity statutes. Therefore, traditional methods of interpretation of other statutes may seem counterintuitive when applied to the Act. In corporate statutes, it is generally assumed that a corporation may not have a power to take action unless *permitted* by the statute under which it is organized. With an unincorporated entity, it is generally assumed the entity has the power to take action unless *prohibited* by the statute under which it is organized. Where the Act does not address a particular power, because the general nature of a limited cooperative association under state law is an unincorporated association, it is intended, and probable, that the association has a power to vary the terms because it would not be specifically prohibited by the Act.

D. Organic Rules

The Act follows recent nomenclature in entity statutes by using the term "organic rules" to encompass the primary organizational documents of a limited cooperative association. Under the Act these are the Articles of Organization and the Bylaws of the association.⁸⁹

85. See *id.* §113(a).

86. *Id.* §113(b).

87. *Id.* §113(d).

88. *Id.* cmt.

89. *Id.* § 113.

E. Name of an Association

The name of an association organized under the Act must contain the words “limited cooperative association” or “limited cooperative,” or any of the permitted abbreviations of those words.⁹⁰ At the same time, if a state that adopts the Act has a statute limiting the use of the word “cooperative” in the name of an entity, section 111(c) should be adopted to avoid the commanded use of these words being in violation of the other statute’s limitations.⁹¹ The name is an important feature of the Act. The use of “limited,” together with “cooperative,” serves a public notice function signaling the possible existence of investor members who may have governance rights but not control. Thus, for purposes of the name, the “limited cooperative association” is to “cooperatives” as a “limited partnership” is to “partnerships.”

F. Organizing an Association; Articles of Organization and Bylaws

An association may be organized by one or more organizers.⁹² The organizers must be individuals.⁹³ An association is formed by the organizers delivering Articles of Organization to the Secretary of State (or other state office charged with the maintenance of entity records) for filing.⁹⁴ The Articles must contain information designated in Section 302(a), and under Section 302(b), may contain any other provisions not inconsistent with the Act.⁹⁵

Although an association may be formed by only one organizer, Section 501 requires there to be at least two patron members for the association to begin business unless the association is to be a wholly owned subsidiary of another cooperative organization.⁹⁶ The requirement of two patron members may be increased by an adopting state.⁹⁷ After Articles of Organization are delivered for filing, the initial Board of Directors is to meet to adopt Bylaws and carry on any other business brought before the meeting.⁹⁸

The Bylaws of an association are to include the information listed in Section 304(a) of the Act unless the information has been included in the Articles of

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90. *Id.* § 111(b).
91. *Id.* § 111(c) (authorizing the use of an *available* name).
92. *Id.* § 301.
93. *Id.* §§ 102(21), 301 cmt.
94. *Id.* § 302.
95. *Id.* § 302 (a)-(b).
96. *Id.* § 501 & cmt.
97. *Id.* § 501 cmt.
98. *Id.* § 303(a)(1).

Organization.⁹⁹ This information will determine much of the organizational structure of the association and should be developed with care, bearing in mind the provisions of the Act that cannot be varied by the organic rules. The Section draws upon requirements for operating agreements of limited liability companies, partnership agreements of partnerships, and bylaws of cooperatives as required under various statutes.¹⁰⁰

Without bylaws much of the relationship between the limited cooperative association and its members likely will be covered by the Act's mandatory or default provisions. The primary focus of the required provisions is on governance and financial rights.¹⁰¹ Default rules are provided for many items that can be covered in bylaws. The Act permits the bylaws to vary many of those default rules.¹⁰² The Act does not, however, address or provide for all matters that are permitted to be covered in an association's bylaws. Best practices probably dictate that bylaws contain comprehensive provisions for the governance and financial structure of the association.

Section 304(a)(1), together with Sections 113(d) and 1001, requires the organic rules to set forth the financial rights and obligations, including contribution obligations between the members and the limited cooperative association.¹⁰³ The items contained in the Section broadly include both financial benefits and burdens.¹⁰⁴ Section 113(d) states that capital contribution requirements (both initial and additional) must be provided in the organic rules.¹⁰⁵

Oral bylaws are not permitted by this Act; however, not all policies or procedures adopted by the board of directors pursuant to subsection 801(b) need be contained in the bylaws.¹⁰⁶

G. Members

The Act contemplates the possibility – but does not require – that there will be two types of members in a limited cooperative association, patron members and investor members.¹⁰⁷ Unless investor members are provided for in the organic rules, all members will be patron members.¹⁰⁸ Although it can be varied

99. *Id.* § 304(a).

100. *Id.* § 304 cmt.

101. *See id.*

102. *See id.* § 113 cmt.

103. *See id.* §§ 113(d), 304(a), 1001.

104. *See id.* § 304.

105. *Id.* § 113(d).

106. *Id.* § 304 cmt. *Compare id.* § 304(b) and § 801(b).

107. *Id.* § 602(a) & cmt.

108. *Id.* § 602(a).

by the organic rules, a person admitted as one type of member remains that type of member so long as the person remains a member of the association.¹⁰⁹ A person can be both a patron and an investor member.¹¹⁰

The organic rules may also divide members into classes and, in the case of patron members, into geographic districts.¹¹¹ If the organic rules do provide for classes or districts, they can provide for meetings of members in the districts or classes, nomination and election of directors by district or class, and election of delegates to vote on behalf of the districts or classes at members meetings.¹¹²

It is the introduction of investors into membership of a limited cooperative association that may raise questions or objections about whether an association organized under the Act or under a new state cooperative statute can be a true cooperative. Historically, investors could only be non-voting participants in a cooperative through investments in non-voting preferred stock or other non-voting interests.¹¹³ The new state cooperative statutes and the Act have taken the position that investors with voting rights may co-exist with patron members of a cooperative without destroying the fundamental principles of cooperation to an extent that destroys the cooperative approach.¹¹⁴

Under Section 502, a person becomes a member (1) as provided in the organic rules; (2) as the result of a merger or consolidation; or (3) with the consent of all the members.¹¹⁵

This Section combines [elements of] traditional cooperatives, limited liability companies and partnerships in determining how persons become members. Traditional cooperatives usually provide for the qualifications and the process for admitting members in their bylaws [but do not require member consent for admission to membership]. Limited liability companies and partnerships usually provide for these . . . in their operating agreements or partnership agreements, respectively, and frequently require member consent for admission as a member or partner in the entity.¹¹⁶

Most limited liability company statutes address in separate provisions: (1) how a limited liability company obtains its initial member or members; and (2) how additional persons might later become members. This Act does not follow that approach. The organic rules need to provide for both. There are no default rules covering this. Section 603 of the Act does address transfers of mem-

109. *Id.* § 602(b).

110. *Id.* §§ 116, 602(b)(3).

111. *Id.* § 517(a).

112. *Id.* § 517(c).

113. *Id.* § 102 cmt.

114. *See id.*

115. *Id.* § 502.

116. *Id.* § 502 cmt.

bership interests and restrictions on transfers.¹¹⁷ The organic rules are permitted to change certain aspects of the default rules provided there. Even if the organic rules provide details of how members of a limited cooperative association are admitted to membership, those provisions could be overridden with the consent of all of the members under 502(3).¹¹⁸ Certain aspects of transfers of membership interests are subject to the Uniform Commercial Code.¹¹⁹

Section 504 shields members from debts, obligations, and liabilities of a limited cooperative association unless the Articles of Organization provide otherwise.¹²⁰ The shield may not be removed in bylaws. This section does not, however, apply to claims seeking to hold a member or manager directly liable on account of the member's own conduct, as where a member personally guarantees an obligation of the association, or where a member commits a tort in connection with the association's operations.¹²¹

Article 5 of the Act generally follows a corporate model in connection with annual and special meetings of the members with some particular exceptions. Section 510 provides that the member or members present at a meeting constitute a quorum unless the organic rules provide otherwise.¹²² This means that as a default, one member could constitute a quorum for a meeting. Voting is also different than under a corporate model or under other traditional cooperative statutes. The Act provides a controlling factor in patron members. It also defaults to a one member one vote approach for patron members as found in many traditional cooperative statutes, but this can be varied by the organic rules.¹²³

H. *Voting by Members*

The organic rules may provide for a larger number of votes than one vote per member. They may also allocate patron voting power by district or class, or a combination of the two.¹²⁴

If the organic rules vary the "one member, one vote" approach, Section 512 allows allocation of voting power among patron members to be based on use or patronage, equity (investment in the association), or if a patron member is a cooperative, the number of its patron members, or a combination of those ap-

117. *Id.* § 603.

118. *Id.* § 502(3).

119. *Id.* § 603(a).

120. *Id.* § 504.

121. *Id.* § 504 cmt.

122. *Id.* § 510.

123. *Id.* § 511.

124. *Id.* § 511 cmt.

proaches.¹²⁵ Where voting is to be based on patronage (business conducted with the association), there are various ways in which patronage can be measured. These include, for example, “the quantity of business a member conducts with the association measured in units, weight or other methods of measuring quantities[,] . . . hours worked in a worker owned association,” or square footage occupied in a housing association.¹²⁶

Investor members have only one vote per member unless the organic rules provide for a different allocation of voting power for investor members. Voting can also be allocated among investor members by class or a combination of classes.¹²⁷

In providing protection for patron members, the Act provides a unique voting system that is applicable throughout the Act although voting percentages are different in various Sections.¹²⁸ For general matters (other than votes on amendments to the Articles of Organization and certain Bylaw provisions, dissolution, conversions, mergers, and certain dispositions of assets which may have higher percentage voting requirements),¹²⁹ (1) patron members must have at least a majority of the voting power in the association, (2) a majority of all the members voting at the meeting must be obtained to pass the matter being voted on, *and* (3) a majority of the votes cast by patron members must also be in the affirmative (unless the organic rules provide for a larger percentage of the patron member vote).¹³⁰

The two step approach in (2) and (3) is similar to approaches taken in the new state cooperative statutes, but there exists an important distinction. In most of the new state cooperative statutes, the vote required of patron members can be reduced by the organic rules to as low as fifteen percent (15%) of the total vote.¹³¹ The Act does not permit the approving patron votes to be less than a majority of the voting power of patron members present and voting.¹³² While the percentage of voting power of patron members may be increased, it may not be reduced below the majority standard under the Act.¹³³

The Act defaults to a prohibition on voting by a proxy, but this may be changed by the organic rules.¹³⁴ “If voting by a proxy is permitted, a patron

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125. *Id.* §§ 511, 512(a).
 126. *Id.* § 512(a)(2) cmt.
 127. *Id.* § 513.
 128. *See id.* §§ 405, 514, 1205, 1504, 1603, 1608.
 129. *See id.* §§ 405, 1205, 1504, 1603, 1608.
 130. *Id.* § 514 & cmt.
 131. *See, e.g.*, MINN. STAT § 308B.545(1) (2008).
 132. UNIF. LTD. COOP. ASS’N ACT § 514.
 133. *Id.* § 514 cmt.
 134. *Id.* § 515(a).

member may appoint only another patron member as a proxy, and if investor members are permitted, an investor may appoint only another investor member as a proxy.¹³⁵ If a member holds both a patron and an investor membership, the member must appoint another patron member as a proxy to vote the patron membership interest and another investor member to vote the investor membership interest.¹³⁶ The organic rules may also provide for voting by mail or by other means on matters subject to a vote by the members.¹³⁷

“Broad power [exists] for the organic rules to provide for membership voting to be conducted in other [ways] than by being in attendance at a meeting or by authorizing a vote to be cast by a proxy. The power can be extended to all or less than all matters brought before the members at a meeting.”¹³⁸ The power can be employed to exclude other means of voting.¹³⁹ In addition, secret ballots may be required.¹⁴⁰ Voting by mail or electronic means could also be authorized, with the directors determining which questions may be voted on by mail or other means.¹⁴¹

An association may desire to study whether it is wise or a best practice to authorize both voting by mail or electronic means and by a proxy at the same time. If voting by mail or [electronic] means is permitted, votes may be cast without the benefit of discussion provided by attendance at a meeting. Although a member authorizing a proxy to vote for the member would not have that benefit, at least the proxy [would]. . . . [I]f mail or [electronic ballots] are not permitted, less than a representative vote may be obtained.¹⁴²

I. Dissociation

A member may dissociate, or withdraw, from a limited cooperative association whether the dissociation is rightful or wrongful.¹⁴³ The Act recognizes the power of a person to dissociate as a member of a limited cooperative association. “Power” to dissociate differs from the “right” to dissociate. While a member may have the power to dissociate from an association, such dissociation may be “wrongful,” and as such, a violation of the organic rules.¹⁴⁴ Disassociation might

135. *Id.* § 515(b).

136. *Id.* § 515 cmt.

137. *Id.* § 515(d).

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.* § 515(d), cmt.

143. *Id.* § 1101(a).

144. *See id.* §§ 1101(a), 1101(b), cmt. (describing wrongful dissociation which can be modified by the organic rules).

also violate contractual obligations between the member and the association. For example, a prohibition against dissociation in the organic rules could not stop a member from dissociating from the association (the power to dissociate), but the dissociation would clearly be a violation of the rules (there being no right to dissociate) which could result in damages being due to the association if the dissociation harmed the association.¹⁴⁵

Although the organic rules may expand or contract the right to dissociate, they may not eliminate the power to dissociate. Section 1101(d) of the Act contains a detailed list of circumstances which will cause a member to be dissociated from the association, but this list may be modified by the organic rules.¹⁴⁶ Without modification a person becomes dissociated if one of the listed circumstances occurs. The Act specifies the effect of dissociation of a member, giving special attention to dissociation resulting from death or incompetency of a member.¹⁴⁷

J. Member's Interest

A member's interest in a limited cooperative association is personal property. It consists of (1) governance rights, (2) financial rights, and (3) the right or obligation to do business with the association.¹⁴⁸ The interest may be in certificated or uncertificated form.¹⁴⁹ Governance rights include all rights to participate in governance of an association as provided in detail in Article 5 of the Act.¹⁵⁰ Financial rights include the rights to participate in allocations and distributions as provided in detail in Articles 10 and 12 of the Act but do not "include rights or obligations under a marketing contract governed by [Article] 7" of the Act, or other separate contractual rights and obligations.¹⁵¹ The Act does not address the right or obligation of a member to do business with the association other than in the context of determining voting power and rights to allocations and distributions. This means rights and obligations with respect to requirements to conduct business with a limited cooperative association are left to the organic rules. This is a subject that may require great care in drafting the organic rules.

Governance rights include the rights of members to vote at meetings as summarized above.¹⁵² These rights include the election of directors,¹⁵³ voting on

145. *Id.* § 1101(c).

146. *Id.* § 1101(d).

147. *Id.* §§ 1101(d)(5), 1102-1103.

148. *Id.* § 601 (1)-(2).

149. *Id.* § 601 (3).

150. *Id.* § 102(13).

151. *Id.* § 102(11).

152. *Id.* § 102(13) cmt.

153. *Id.* § 804.

amendments to the organic rules,¹⁵⁴ dissociation rights,¹⁵⁵ conversion rights,¹⁵⁶ merger rights,¹⁵⁷ and rights for certain dispositions of assets.¹⁵⁸ In addition, although the Act is silent on the point, in accordance with customary rules of parliamentary procedure, members could bring a question before an annual members meeting if the question was not in violation of the ULCAA or the organic rules. They could also petition to have a matter brought before a special members meeting.¹⁵⁹ Another governance element is the ability to serve on the Board of Directors of a limited cooperative association.¹⁶⁰

Financial rights of a member include the rights to share in allocations of profits and losses, distributions of profits and losses, and distributions upon dissolution.¹⁶¹ The Act provides for allocations of profits and losses along a partnership model, but with provisions based in cooperative principles.¹⁶²

Allocation of profits and losses is typically not a matter of statute in general unincorporated or general corporate statutes. “The modern trend is for organizational law to expressly govern distributions but not detail the manner or method of the internal allocation of profits and losses between and among the owners.”¹⁶³ “Rather, allocations are left to organic rules, [e.g.], the operating agreement in limited liability companies, . . . [a]ccounting conventions for financial accounting or reporting, and state and federal income tax” accounting law for purposes of income taxation.¹⁶⁴ Simply, accounting and tax accounting methods are unique and varied and will apply largely independent of any state law allocation provisions.

Moreover, for general business entities there seems to be little purpose for intervention by an organizational statute in allocations. For example, the Revised Model Business Corporation Act (“RMBCA”) has abandoned much of the corporate capital machinery required by older statutes; it no longer requires par value.¹⁶⁵ The purpose of that machinery was creditor protection, and the RMBCA version of that machinery began being dismantled in 1980. Concerning those changes, a leading treatise observed: “It is conceivable, even, that the pro-

154. *Id.* §§ 401-07.

155. *Id.* § 1101.

156. *Id.* § 1603.

157. *Id.* § 1608.

158. *Id.* § 1504.

159. *Id.* § 507(a)(4).

160. *Id.* § 803 (setting forth the qualifications of directors).

161. *Id.* § 102(11) & cmt.

162. *Id.* §§ 104 cmt., 1004 cmt.

163. *Id.* § 1004. *But see* REVISED UNIF. PARTNERSHIP ACT § 401(a) (1997) (requiring capital accounts for each partner).

164. UNIF. LTD. COOP. ASSOC. ACT. § 1004 cmt.

165. REVISED MODEL BUS. CORP. ACT § 2.02(b)(2)(iv) (2003).

posed changes may lead some persons for the first time to examine the degree of protection afforded to creditors by the present legal capital system and discover that it is a Swiss Cheese made up mainly of holes.”¹⁶⁶

While the trend in general organizational statutes has been away from including provisions concerning allocations, regulatory law sometimes uses capital allocation and balance sheet accounting for regulatory purposes, for example, in the regulation of financial institutions.

One reason allocations are important in cooperative law is an analogue to regulatory law. “Allocation of profits and losses is a key component to determine whether an entity is operating in accordance with a ‘cooperative’ plan . . . or on a ‘cooperative basis.’”¹⁶⁷ The Act takes the approach that the use of terms of art undefined in the text is much too ambiguous for purposes of defining a limited cooperative association for state law purposes – a trap to the unwary – and would inhibit the use of the Act and organizations governed by it.¹⁶⁸

A second reason, related to the first, is both historical and a matter of cooperative values. One of the fundamental principles of cooperative organizations is that they operate ‘at cost.’ This is a different concept from operating ‘for profit’ or ‘not for profit.’ This principle has [provided] much confusion for persons dealing with cooperatives, including regulators, who seek to compartmentalize cooperatives as either ‘for profit’ or ‘not for profit’ [organizations].¹⁶⁹

Cooperatives are unique in having a principle that would require a cooperative to have “no profit” and “no loss” at the end of an annual accounting period.

Because of the practical impossibility for many cooperative organizations to operate strictly at cost, techniques have been developed to reach the “at cost” result.

Profits are usually allocated among members (and in some cooperatives among non-member patrons) through some method that returns annual profits to the members on the books of the cooperative, [or] in cash payments, or a combination of both. Traditional . . . agricultural cooperatives have usually used patronage dividends (called by various names such as ‘patronage allocations’ and ‘allocations of net margins’) as the means to [provide for] net profits at the end of an accounting year [or other period] to be allocated among the members.¹⁷⁰

166. UNIF. LTD. COOP. ASSOC. ACT. § 1004 cmt. (citing BAYLESS MANNING & JAMES J. HANKS, JR., *LEGAL CAPITAL* 194 (3d ed. 1990)).

167. *Id.* See, e.g., 26 U.S.C. § 1381(a)(2) (2006) (governing any corporation operating on a cooperative basis for federal income tax purposes).

168. UNIF. LTD. COOP. ASSOC. ACT. § 1004 cmt.

169. *Id.*

170. *Id.*

This approach is similar to the allocations of net profits among partners in a partnership or members in a limited liability company, but is derived in a cooperative from a different philosophical basis than the methods of allocations in partnerships and limited liability companies where allocations are made because of the non-tax paying entity basis of federal and state income tax laws. Another method utilized by certain marketing cooperatives is a “per unit” retain under which the cooperative withholds, as a capital contribution to the cooperative, a portion of the purchase price to be paid to a member for goods or commodities marketed by or through the cooperative.¹⁷¹

[Some traditional cooperatives] permit assessments of members if there is a loss at the end of an annual accounting period. Among other techniques, losses may also be charged against reserves or surplus accounts or be carried over to be offset against future profits. The method of allocation[s] of losses is usually the same as allocations of profits.¹⁷²

This is reflected in Section 1004 of the Act, especially Section 1004(e).¹⁷³

The Act does not address any particular technique to be utilized by an association. Section 1004 does not prohibit any appropriate method to be authorized in the organic rules. While based on partnership accounting techniques and rules, Section 1004 overlays those partnership accounting techniques and rules with the allocation techniques for patron members that have been developed in traditional cooperatives for allocations of profits and losses based on patronage.¹⁷⁴ The organic rules could authorize methods of allocation and authorize the Board of Directors or others to apply the methods to net profits or losses allocated to patron members. The final decision must be made by the Board or in accordance with a formula or method established by the Board.¹⁷⁵ Because investor members are not patron members, the organic rules may provide methods unburdened by patronage considerations for allocating net profits and losses among investor members.¹⁷⁶

A *third reason* the Act “provides rather detailed allocation provisions is because ‘profit’ is a key concept in Section 1004(c)” and sets constraints on the “division of profits between patrons and investor members.”¹⁷⁷ Here the Section operates in a regulatory manner and is one of the central policy provisions in the

171. *Id.*

172. *Id.*

173. *Id.* § 1004(e).

174. *Id.* § 1004(e)(1) & cmt.

175. *Id.* §§ 817(d)(1) (relating to limitations on power of a committee to make allocations); *Id.* § 1004 cmt.

176. *Id.* § 1004 cmt.

177. *Id.* § 1004(e) & cmt.

Act. Section 1004 permits the organic rules to provide for virtually any means of allocation, but defaults to requiring that profits and losses be allocated to patron members. However, if there are investor members, allocations may be made to them.¹⁷⁸ “[T]he organic rules may not reduce the allocation to patron members to less than 50 percent of profits.”¹⁷⁹ Also, unless otherwise provided in the organic rules, losses must be allocated in the same manner as profits.¹⁸⁰

It is imperative to recognize that Section 1004, for purposes of the Act, is only a part of the organizational law of the adopting jurisdiction. Accounting standards, tax law, and exceptions and qualifications found in other state and federal statutes and regulations independently apply to limited cooperative associations governed by this Act. These other laws and regulations may require careful drafting of organic rules to take advantage of, or to comply with, those other laws.¹⁸¹ Thus, a limited cooperative association may not be the best entity choice in any given planning context.

The organic rules govern the allocation of profits and losses subject to limitations in Sections 1004(c) and (d).¹⁸² This Section establishes a series of default rules. First, in part because a limited cooperative association is not required to have investor members, Section 1004(b) establishes the default rule that all profits and losses must be allocated to patron members.¹⁸³ This also shifts the burden of negotiating the financial structure to prospective investor members if the entity anticipates having investor members.¹⁸⁴ This default underscores the primacy of patron members under the default rules.

Section 1004(e) provides a default manner for allocating profits and losses within the patron member group and within the investor member group.¹⁸⁵ Within the patron member group the default is based on patronage (a defined term).¹⁸⁶ Within the investor member group the default is based on contributions similar to, for example, the Uniform Limited Partnership Act (2001).¹⁸⁷

Section 1004(f), and to a lesser extent Section 1004(d), are as much explanatory as they are necessary default rules; though they do perform a default function. These Sections satisfy an expectation of users of the Act familiar with both traditional cooperatives and cooperative associations similar to the Act.

178. *Id.* § 1004(b)-(c) & cmt.

179. *Id.* § 1004(c).

180. *Id.* § 1004(a).

181. *Id.* § 1004 cmt.

182. *Id.* § 1004(c)-(d).

183. *Id.* § 1004(b).

184. *Id.* Prefatory Note, 2.

185. *Id.* § 1004(e).

186. *Id.* §§ 1004(e)(1), 101(22).

187. *See id.* § 1004(e)(2).

They give specific permission for establishing reserves and the manner of allocation that are common in cooperative parlance.¹⁸⁸ In that regard the provisions are helpful for users of the Act who are unfamiliar with cooperatives because they introduce cooperative nomenclature. Section 1004(d)(2) emphasizes the underlying importance of cooperative principles and values.¹⁸⁹ The reference to cooperative principles is meant to be open-ended to allow for their evolution over time. The paragraph is a new formulation, but similar provisions are sometimes found in existing cooperative statutes.

The terms used in Section 1004(c) are not expressly defined by this Act because definitions are not necessary for using the Act, since some of the terms are described and governed by other provisions, and the terms are general rather than specific and definitions might falsely constrain cooperative business practices.

Subsection 1004(c), as supplemented by Section 1004(d), is central to the Act and the operation of limited cooperative associations.¹⁹⁰

The determination of the percentage [floor] required to be allocated to patron members is a difficult policy decision. . . . On one hand, the percentage goes to the heart of what it means to be a cooperative. . . . On the other hand, one of the purposes of the Act is to encourage . . . capital formation by allowing [for] investor members. . . .¹⁹¹

To that end it is necessary to provide enough flexibility in the Act to allow meaningful “financial participation by investor members.”¹⁹² Existing new state cooperative statutes are far from uniform concerning the percentage selected.¹⁹³

This Act mandates a relatively high percentage compared to most existing new state cooperative statutes, but those state statutes do not include the concepts contained in Sections 1004(c)(1) and (c)(2).¹⁹⁴ Those sections recognize that, regardless of the manner of calculation, one of the primary purposes of traditional cooperatives was to provide a market for, or source of, an economic resource – that is, to create a market. In a cooperative formed, for example, to market a product, the total return to members includes the value of the product and any savings or profit generated by the cooperative.¹⁹⁵ In some cooperatives,

188. *Id.* § 1004(d), (f).

189. *See id.* § 1004(d)(2).

190. *Id.* § 1004 cmt.

191. *Id.* § 1004(c) cmt.

192. *Id.*

193. For a comparison of the various new state cooperative statutes, see the chart in Appendix.

194. *Compare* UNIF. LTD. COOP. ASS’N ACT § 1004(c)(1)-(2), *and* Appendix p. 59-60.

195. *Id.* § 1004(c) cmt.

members are either paid or deemed to have received a “selling price.”¹⁹⁶ In other cooperatives, the product delivered to the cooperative simply determines the relative portion of the members’ allocation of the cooperative’s results from operation without fixing or determining a separate sales price of the product (a “net proceeds” or “agency method” arrangement).¹⁹⁷

Subsection 1004(c)(2) is limited to a “stated fixed return, for investor members in computing the requirement that at least 50 percent of net profits must be allocated to patron members.”¹⁹⁸ It is historically rooted in current cooperative law which allows for non-member “preferred” investors through preferred stock.¹⁹⁹

Sections 1004(c)(1) and (c)(2) expressly recognize the market-making component of the limited cooperative association for both patron members (delivering product in this example) and investor members (financing the entity), and use limited contractual mechanisms to determine the value of the different inputs to the association.²⁰⁰ Those values are then subtracted to determine the amount subject to the mandatory allocation floor of 50 percent of profits to patron members.

Just as in other entity planning contexts the choice of financial structure and allocation provisions can dramatically vary the economics of the entity and the financial results to the members. Examples are provided below, illustrating this point. There are reference points that place the examples in their appropriate real world context. *First*, many traditional cooperative statutes allow fixed dividends (often capped) to be paid nonmember preferred shareholders. *Second*, some of the techniques used in the examples (like management contracts) are available for use by traditional cooperatives under current law. *Third*, use of combination structures including multiple entities and cooperatives could be used to yield similar (if not the same) results under current law.

Fourth, any return to investor members or payment on account of capital can reasonably be considered as payments in lieu of debt payments. *Fifth*, cooperatives are, at root, self-help organizations and one of their primary functions is to provide a service or market for patron members as an extension of the patron members’ individual businesses in order to make those businesses more profitable. An important function of worker cooperatives, for example, is to provide patron members jobs; however, in an agricultural marketing cooperative it is to provide a market. Thus, the payments or better pricing opportunities of the latter

196. *See id.*

197. *Id.* §§ 604(c) cmt, 1004 cmt.

198. *Id.* § 1004(c)(2).

199. *Id.* § 102(14) cmt.

200. *Id.* § 1004(c) cmt.

function should not be overlooked. One reason for cooperative activity in ethanol production, for example, is to increase demand and price for commodities.

In sum, the first three reference points for the examples stand for the comparative proposition that the techniques in the examples are already “out there” in different formats. The last two reference points are matters of fundamental theory for traditional cooperatives and the ULCAA. Even given that the investment potential for patron members is one reason for the new state cooperative statutes, they remain self-help organizations. For value-added enterprises, purchase price remains a fundamental piece of the equation. In order to receive higher prices and create markets, plants, property, and equipment are required. To attract debt capital a modicum of equity risk capital is required. ULCAA increases the ability to obtain necessary start-up capital when compared to traditional cooperative statutes. Moreover, every dollar of equity decreases fixed cost debt overhang for operations. In other words, ULCAA may allow more optimal debt-equity structures. Nonetheless, the flexibility provided by modern business deals, however structured, requires a finer grain of planning as illustrated by the following examples of the operation of Section 1004.

Ex 1. Assume a “typical” producer cooperative. The members deliver product to the co-op and get paid a market price. There is a product sale. At the end of the year the books are closed and the price paid to producers for product is subtracted (as cost of goods sold in the books of the cooperative association) to help determine profit (or margin or net income). Thus, if gross revenue were \$1,600 and the only “expenses” were the costs of the product to the association (assume \$1,000) and administrative expenses (\$100); the “profit” would be \$500. If the organic documents allocate fifty percent to patron members and fifty percent to investor members each group would receive \$250. The patron members therefore received the market price for the product, \$1,000, plus a profit allocation of \$250 for a total of \$1250. The investor members would be allocated \$250. This is the “sale method.”

Ex 2. Now assume an agency method (according to AICPA Audit Guidelines 2002, this method is used most frequently for specialty produce). Here, there is no market price contract between the association and the producer. Rather the association acts as an agent for the producer. The producer is to receive a proportionate share of the total price received for all products sold by all producers through the agency arrangement as the producer’s price for products sold. The association sells the product (gross revenue) for \$1,600 (as in Ex. 1). However, there is no “cost of goods sold” because the co-op association did not contract for the product with the producer to purchase the product. Thus the only expense was an administrative expense of \$100 (and assume it is fully expended

on operations). The entire net price for the produce sold, or \$1,500 (\$1,600 less the \$100 administrative expense) would be paid to the producer. Even assuming the same 50-50 split as in Ex. 1, the investor participants would receive nothing because there are no profits resulting from the transaction.

Ex 3. A value-added pasta production facility will cost \$2,000,000 to construct. To become a patron member requires a five year delivery contract and an investment of \$10,000 under the organic rules. Forty producers become patron members (and their aggregate investment, therefore, is \$400,000, or twenty percent of the necessary investment). A commercial pasta maker agrees to contribute \$600,000 (thirty percent of the necessary investment) and supply manufacturing management for five years. In order to get the remaining \$1,000,000 from traditional lending sources the pasta maker agrees to execute a \$300,000 stand-by letter of credit.

(a) The “50-50” allocation split of a first year profit of \$100,000 (after paying the producers \$200,000 for their delivered products under their delivery contracts) would be an aggregate of \$50,000 to investor members and \$50,000 to patron members. The patron members receive \$200,000 in the aggregate under their contracts for a total of \$250,000.

(b) A question that could be addressed in the organic rules involves what category is the \$400,000 aggregate patron member “investment?” Each patron participant could be in dual capacity as both a patron member and an investor member. If so, the \$400,000 investment could be categorized to make each patron member also an investor member to the extent of the up-front investment. If so the results could be:

- Patron members as patron members \$50,000 (on patronage basis)
- Patron members own forty percent of the investor member interests so they receive \$20,000 in that capacity.
- Patron members receive \$200,000 under their contracts.
- As a result participants who are patrons receive \$270,000.
- Nonpatron investor participants receive \$30,000.

Ex 4. Assume the same facts as in Example 3(a), except the contract with the patron member is an agency (or net proceeds) arrangement. As in Example 2, this would mean the patron members would receive the entire amount of the selling price for the commodity delivered (\$300,000) less any service charges (assume \$50,000) deducted for operations. The patron members would receive \$250,000 for their products. There would be no profit to allocate among the investor members (including to patron members who also hold an investor member interest).

Ex 5. Assume the same facts as in Example 4 except pasta maker contracts to manage the manufacturing plant for \$200,000 annually. So, again, there is \$300,000 in gross proceeds with the organic rules requiring that profits be split 50-50. The pasta maker, however, receives \$200,000 under the management contract (rather than the producers receiving that amount for their product as in example 3(a)). This would be a cost that would be deducted from the gross proceeds received of \$300,000. Patron participants would be paid “net proceeds” of \$50,000 for their products (\$300,000 gross proceeds less (a) \$200,000 for management expenses and (b) \$50,000 for other expenses). Further assume the patron members are not in a dual capacity and the pasta maker is the only investor member. The sole investor member would receive \$200,000 as a management fee. There would be no profits to allocate among the members.

The results in Examples 3-5 would meet the 50-50 test provided by the organic rules but the results vary as follows:

- Ex. 3(a): investor members \$50,000; patron members \$250,000.
- Ex. 3(b): Non-dual capacity investor members, \$30,000; patron members (but including their dual investor-patron member capacity), \$270,000.
- Ex. 4: investor members, 0; patron members, \$250,000.
- Ex. 5: investor members, \$200,000; patron members, \$50,000.

The range for investor members is from zero to \$250,000; for patron members it is from \$50,000 to \$270,000 even though each variation meets the hypothetical 50-50 split. The numbers are for illustration purposes only. They can easily be manipulated (using the “sale” method) to illustrate situations where almost all the risk of loss, and little upside gain, accrues to investor participants. Now compare another variation as set forth in Example 6, below.

Ex. 6. Same facts as in Example 5 but the \$200,000 value on the management contract is categorized as patronage service. Gross proceeds are \$300,000. Assuming the \$400,000 patron participation contribution does *not* make the patron member an investor member, but simply creates an “agency” relationship, the total value the association received from the members’ services and products was \$500,000 (\$200,000 from the management contract and \$300,000 from products sold): the association could be structured so the patron members would receive sixty percent of \$250,000 (the \$300,000 in gross proceeds less \$50,000 in expenses). The investor member would receive forty percent of the \$250,000 (the \$300,000 in gross proceeds less \$50,000 in expenses) profit which is \$150,000. The investor member would receive \$100,000 under the contract. The patron members would receive \$150,000 as the proceeds from the sale of the products. There would be no profits to be allocated.

Whether these results are “fair” is not the issue for the purpose of these illustrations. Rather, these illustrations demonstrate the wide variety of results that can result from how permitted allocation methods and contracts can be used to vary dramatically the economic results within a limited cooperative association. The “reference points” discussed in this article appearing immediately before the examples, however, provide important context for how the Act operates internally as well as what is possible to plan even outside the Act using traditional cooperatives and combination entities.

Profits may be allocated to persons who are patrons of a limited cooperative association but who are not members, if this is provided by the organic rules.²⁰¹ Profits may also be allocated to an unallocated account, but partnership tax accounting rules may provide a default allocation of unallocated amounts among members for tax purposes.²⁰²

K. Distributions

Partnerships, S corporations, and traditional cooperatives all permit the entity to retain profits allocated among the participants in the entity without distributing them to the participants. This Act follows that model by placing authority in the Board of Directors to determine when property of a limited cooperative association is to be distributed to the members.²⁰³ Distributions do not need to be made simply because profits have been allocated to the members. The Board of Directors could also distribute payments in capital to the members.²⁰⁴ The only limitations the Act places on distributions are that an association may not make a distribution if, after the distribution the association would not be able to pay its debts as they become due in the ordinary course of business, or if the distribution would cause the association’s assets to be less than the sum of its total liabilities.²⁰⁵ The tests for the limitations may be applied both when the distribution is authorized and when it is made depending on the circumstances under which the distribution is to be made.²⁰⁶

A director can be liable for consenting to an improper distribution.²⁰⁷ An improper distribution can also be recovered from a person receiving the distribution if the person knew the distribution was improper.²⁰⁸

201. *Id.* § 1004(a).

202. *Id.* § 1004(d)-(e).

203. *Id.* § 1005.

204. *Id.* § 1006.

205. *Id.* § 1007(a).

206. *Id.* § 1007(b), (c).

207. *Id.* § 1008(a).

208. *Id.* § 1008(b).

L. Board of Directors

A limited cooperative association must be managed by, or under the direction of, a board of directors, which may adopt policies and procedures that do not conflict with the organic rules or the Act.²⁰⁹ Unlike a general partner in a partnership, however, a director does not have agency authority on behalf of the association simply by being a director.²¹⁰ A director does not have liability for obligations of an association simply by being a director.²¹¹

Although conceptually it may be difficult to have a cooperative with fewer than three members unless the cooperative is a subsidiary of another cooperative, the Act does not require there to be more than one member when a limited cooperative association is organized; although, it does require two patron members to commence business.²¹² If there are at least three members of an association, there must be at least three directors.²¹³ Although the Act does not directly limit the number of directors, the number of directors may not exceed the number of members, except by a limited number of non-member directors that may be authorized in the organic rules pursuant to a formula contained in the Act.²¹⁴

Directors must be individuals and, except for authorized non-member directors, directors must be individual members or a designee of an entity member.²¹⁵ The Act also requires that a minimum number of directors be patron members, or designees of patron members that are not individuals, and that at least a majority of the Board must be elected exclusively by patron members.²¹⁶ The organic rules may provide for the nomination and election of directors by classes or districts.²¹⁷

“If a class of members consists of a single member, the organic rules may provide for the member to appoint a director”²¹⁸ Unless the organic rules provide otherwise, cumulative voting is not permitted for the members of a limited cooperative association.²¹⁹ With limited exceptions, directors are “to be

209. *Id.* § 801(a)-(b).

210. *Compare Id.* § 801(c), with UNIF. LTD. PART. ACT § 402(a) (2001).

211. *Id.* § 802.

212. *Id.* § 501.

213. *Id.* § 801(a).

214. *See id.* § 803(c).

215. *Id.* § 803(a).

216. *Id.* § 804(a)(2).

217. *Id.* § 804(c)-(d).

218. *Id.* § 804(e).

219. *Id.* § 804(f).

elected at an annual members meeting.”²²⁰ “The term of a director may not exceed three years,” and the Act defaults to one year terms; however, the organic rules could provide for term limits.²²¹

Directors may resign.²²² They may also be removed with or without cause unless the organic rules provide otherwise.²²³ The Board of Directors may not remove a director, but the Board may suspend a director for up to thirty days for cause as defined in the Act, and may, prior to the end of the suspension period, call a special members meeting to have the members vote on the removal of the director.²²⁴

Although the Act’s provisions may be varied by the organic rules, the Act provides that the Board must fill a vacant director’s seat for the time period leading up to the next annual members or special members’ meeting when the members vote to fill the vacancy for the remainder of the vacating director’s unexpired term.²²⁵ If a director was elected by a class or a district, subject to variation by the organic rules, a director chosen to fill a vacated seat must be elected or appointed by the members in the class or district.²²⁶

A Board of Directors must meet at least once annually.²²⁷ A quorum for a directors meeting is a majority of the fixed number of directors unless the organic rules set a higher percentage for a quorum.²²⁸ If directors leave a meeting that has convened with a proper quorum, the meeting may continue and business may be transacted even if there is no longer a quorum at the meeting.²²⁹

The Act permits jurisdictions adopting the Act to make references to the jurisdiction’s corporate or cooperative laws for the standards of conduct and liability for directors,²³⁰ the laws of conflicts of interest,²³¹ and indemnification of directors and officers as well as maintenance of insurance for indemnification purposes.²³² The reason for this approach is to permit jurisdictions to coordinate these subjects with the policy decisions made by jurisdictions generally, as reflected in the referenced laws.²³³

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220. *Id.* § 804(g).
 221. *Id.* § 805(a)-(b).
 222. *Id.* § 806.
 223. *Id.* § 807(1).
 224. *Id.* § 808 cmt.
 225. *Id.* § 809(a).
 226. *Id.* § 809(b).
 227. *Id.* § 811(a).
 228. *Id.* § 815(a).
 229. *Id.* § 815(b).
 230. *Id.* § 818.
 231. *Id.* § 819(a).
 232. *Id.* § 901.
 233. *Id.* § 901 Legislative Note.

The Act generally follows the format for corporate type boards of directors. It is expected courts will apply corporate considerations and decisions in matters involving the boards of directors of limited cooperative associations. The Act does, however, permit association boards to consider matters beyond those generally considered to be appropriate for corporate boards in making decisions. An association board may consider interests of employees, customers, suppliers of the association, the community in which the association operates, and other cooperative principles and values that can be applied appropriately in the context of a board decision.²³⁴ This is an area where the Act seeks to include cooperative principles in the overall context of the Act.²³⁵

The organic rules may provide for officers for a limited cooperative association.²³⁶ This would usually be in the bylaws. If the organic rules do not provide for officers, the board of directors must do so, but the Act only requires one officer who is to be designated as the one to prepare records required to be maintained by the association under Section 114 of the Act and to authenticate records.²³⁷ In this way the Act provides great flexibility in establishing officers and providing for their duties and authority.²³⁸ If the organic rules do not provide otherwise, the board appoints the association's officers.²³⁹ Officers may be removed by the board with or without cause, and an officer may resign at any time – all subject, of course, to any contract an officer may have with the association.²⁴⁰ “The election or appointment of an [individual as an officer] . . . does not of itself create a contract between the association and the officer.”²⁴¹

M. Right to Information Between Members

The Act sets forth information required to be maintained by a limited cooperative association. An association can require additional information to be maintained through its organic rules or otherwise.²⁴² Certainly the list of required information would not be sufficient for proper operation of an association. The requirement regarding the maintenance of information is related to the right of members, and in some cases dissociated members, to obtain information regard-

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234. *Id.* § 820.
235. *Id.* § 820 cmt.
236. *Id.* § 822(a)(1).
237. *Id.* § 822(b).
238. *See id.* § 822 cmt.
239. *Id.* § 822(c).
240. *Id.* § 823 & cmt.
241. *Id.* § 822(e).
242. *Id.* § 821.

ing the association.²⁴³ The Act does not give assignees of financial rights the right to obtain information,²⁴⁴ but they could obtain information in connection with litigation between them and an association if the information was relevant to the subject of the litigation. An association may impose reasonable restrictions, including non-disclosure requirements on the use of information obtained by member under Section 505.²⁴⁵

The right of a member to obtain information is basically divided into two parts. Certain information (such as the directors and officers, articles of organization, bylaws, financial statements for the last six years, and minutes of members meetings) may be obtained without a particular reason, but the same information may only be obtained once by a member in a six-month period.²⁴⁶

Other information may only be obtained if requirements and procedures of the Act are met, including a showing that the member seeks the information in good faith and for a proper purpose reasonably related to the member's interest as a member.²⁴⁷ An association may decline to provide the information if it has a proper reason for doing so.²⁴⁸ If a dispute arises regarding whether restrictions on the use of information obtained from an association is reasonable, the burden is on the association to prove "reasonableness."²⁴⁹

A member may obtain information regarding the member's interest in the association, but may not obtain similar information regarding other members, although a list of members and their addresses may be obtained for a proper purpose.²⁵⁰ Information is to be provided at the principal office of a limited cooperative association.²⁵¹

There is a burden on a member seeking records if the member is not located in the jurisdiction in which the association's principal office is located and is, therefore, required to travel. This burden is reduced by the member being entitled to engage an attorney or agent in the jurisdiction where the principal office is located in order to access the records. Nothing . . . prevents the association from making records available at locations in addition to the principal office or electronically.²⁵²

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243. See *id.* § 505.
 244. *Id.* § 505(j).
 245. *Id.* § 505(g).
 246. *Id.* § 505(a).
 247. *Id.* § 505(b)(1).
 248. See *id.* § 505(c)(2).
 249. *Id.* § 505(g).
 250. *Id.* §§ 114(a)(9)(A), (a)(17), 505(b).
 251. *Id.* § 505(b).
 252. *Id.* § 505 cmt.

N. *Right to Information for Directors and Committee Members*

Directors and members of committees are entitled to “obtain, inspect and copy all information regarding the state of the activities and financial condition of the limited cooperative association and other information regarding” an association’s activities as are necessary for the directors of committee members to perform their respective duties.²⁵³ The information may not be used for any purpose that would violate a duty of the association.²⁵⁴

O. *Dissolution*

The Act provides three ways in which a limited cooperative association may be dissolved. These are typical of provisions for dissolution of both incorporated and unincorporated entities. The details of each of the ways are set forth in the Act.²⁵⁵ The Act provides for the winding up of an association in dissolution, for distribution of its assets, court supervision if that becomes necessary, and disposition of claims against the dissolved association.²⁵⁶

Although not required, the Act permits a dissolved association (or an association about to dissolve) to deliver a statement of dissolution for filing,²⁵⁷ and a statement of termination when winding up has been completed.²⁵⁸ These statements can be helpful in providing a public record of the status of an association at the end of its life as an entity.

P. *Actions by Members*

The Act does not contain provisions regarding direct claims of a member of a limited cooperative association against the association, leaving those claims to other applicable law. It does set forth provisions for a derivative action,²⁵⁹ although these are optional provisions for adopting jurisdictions and would not be adopted in jurisdictions that provide for derivative actions under other laws or rules of procedure.²⁶⁰

253. *Id.* § 821.

254. *Id.*

255. *Id.* §§ 1202-1205, 1211.

256. *Id.* §§ 1206-1210.

257. *Id.* § 1214.

258. *Id.* § 1215.

259. *See id.* § 1301.

260. *Id.* Legislative Note.

Q. *Significant Actions by an Association*

The Act provides for amendment of the Articles of Organization and By-laws of a limited cooperative association, conversion of an association into another form of entity, mergers with another entity, and dispositions of assets.²⁶¹ Most of the provisions relating to these transactions are mandatory, but a few may be varied by the organic rules.

R. *Conversions, Mergers and "Consolidations"*

The Act provides the law which governs the merger and conversion of limited cooperative associations, but does not attempt to change existing law concerning other entities. A traditional cooperative would need to be authorized by other law to convert to a limited cooperative association, and action by a limited partnership on the conversion to a limited cooperative association would be governed by limited partnership law.²⁶² This Act simply accepts the conversion governed by that other law, it does not provide authority for the other organization to do it. Therefore, fundamental changes such as conversions or mergers require the "constituent" entities in cross-entity transactions to coordinate two separate state laws.²⁶³ The planner for all such fundamental changes is forewarned that there are also separate bodies of law at both the state and federal level as well that must be coordinated to avoid catastrophic unintended consequences. One of several probable sources of other law which must be coordinated is the law of taxation.²⁶⁴

Modern entity statutes have generally abandoned the concept of consolidations and use mergers as a means of combining entities. Recognizing that in traditional rural agricultural cooperatives, a merger may be seen by some as a "take over" where a consolidation is an even combination, the Act provides that a merger may be called a "consolidation," although the rules for a merger would still apply.²⁶⁵ If a statute governing one of the combining entities does not provide for conversions, it is likely the term "merger" would be required to be used for an association organized under the Act if a combination were to be effected.

The Articles dealing with amendments to organic rules, conversions, mergers, consolidations, and dispositions of assets have special voting provisions that require larger votes by members for approval of the transactions under these

261. *Id.* §§ 401, 1602, 1606.

262. *See id.*

263. *Id.* § 1610(10)(b).

264. *Id.* § 1602 cmt.

265. *Id.* § 1611(a).

Articles than that of more routine matters subjected to a vote of the members (although these voting requirements can be modified to some extent by the organic rules).²⁶⁶

S. *Foreign Cooperatives*

A foreign cooperative, *i.e.*, a cooperative association organized under a law similar to the Act in another jurisdiction, may obtain a certificate of authority to engage in business or other activities in a jurisdiction that has adopted the Act.²⁶⁷ What is “similar” is left to interpretation by others, but it does not include a cooperative organized under a traditional cooperative statute.²⁶⁸ Certain activities are specifically listed as not constituting the transaction of business for this purpose.²⁶⁹

T. *Application of Other Laws*

It is recognized in the Act that it does not stand in isolation from other laws. It seeks to coordinate with other laws in ways that are not commonly provided in other statutes that typically remain silent with respect to the coordination. The principles of law and equity supplement the Act unless displaced by particular provisions of the Act.²⁷⁰ If an adopting jurisdiction has an exemption for patron interests in a cooperative organization under the jurisdiction’s securities laws, the Act provides an optional section to coordinate with that exemption.²⁷¹ A similar optional provision coordinates the Act with state antitrust and restraint of trade laws that may provide exemptions for other types of cooperative entities.²⁷²

Although perhaps viewed as surplusage by some, the Act makes it clear that requirements of laws governing various types of enterprises that could be carried on by a limited cooperative association will be applicable to an association organized under the Act that seeks to carry on one of the types of enterprises.²⁷³ For example, housing cooperatives frequently are the subject of statutes that require various disclosures to persons who acquire memberships in a housing cooperative or require a one member, one vote approach to membership voting.

266. *Id.* § 1608.

267. *Id.* § 1402.

268. *Id.* § 1401 cmt.

269. *Id.* § 1403.

270. *Id.* § 108.

271. *Id.* § 1009.

272. *Id.* § 110.

273. *Id.* § 109.

If an association organized under the Act desired to operate as a housing cooperative, it would be required to meet these types of requirements if it were to do so. Another approach an adopting jurisdiction could implement would be to deal with the “regulatory” requirements of other statutes in those statutes themselves by dealing with associations organized under the Act in the other statutes. The purpose of Section 109 of the Act is to attempt to make it clear that the Act is limited to its terms; that it does not supersede other law, either directly or by implication, including regulatory law; and that a limited cooperative association organized under the Act is not exempt from separately qualifying as a “cooperative” under other law without first meeting the statutory, regulatory or common law definitions for purposes of that other law.²⁷⁴

IV. CONCLUSION

The Act, in providing for a new form of a cooperative-based entity, seeks to bring together in one organization the users of the services of a limited cooperative association with the providers of capital for the organization’s operations. It provides for an unincorporated entity with great flexibility, while requiring a base of cooperative principles. An association organized under the Act will not fit all situations; but the Act provides a tool in which capital, possessing a voice in the entity, may be combined with the users of the entity to obtain capital that cannot be obtained without the capital providers having a direct say in the organization’s structure and/or operations.

274. *See id.* § 109 cmt.

CITATION ²⁷⁵	SCOPE	PATRON VOTES	PATRON ELECTED DIRECTORS	AMENDMENT OF ARTICLES	MEMBER VOTING	ALLOCATION ²⁷⁶
<p>“Wyoming Processing Cooperative law [sic]” (enacted 2001). WYO. STAT. ANN. §§ 17-10-201 to 17-10-253 (2008).</p>	<p>Formed under a cooperative plan to market and “change the form or marketability of crops, livestock and other agricultural products . . . and other purposes that are necessary or convenient to facilitate the production or marketing of agricultural products by patron members and other purposes that are related to the business of the cooperative.” WYO. STAT. ANN. § 17-10-205.</p>	<p>Each patron has one vote but may have more. “On any matter of the cooperative, the entire patron members voting power shall be voted collectively based upon the . . . majority of patron members voting on the issue.” WYO. STAT. ANN. § 17-10-230.</p>	<p>At least one-half of the voting power on general matters shall be allocated to one or more directors elected by patron members. WYO. STAT. ANN. § 17-10-217.</p>	<p>Typical corporate-like process. Majority of member votes cast (assuming a quorum).</p>	<p>Present, alternative method if authorized by the board; no proxy (but delegate voting not proxy). WYO. STAT. ANN. § 17-10-230.</p>	<p>Based on contributions unless otherwise provided. Patrons collectively shall have not less than fifteen percent. Same rule for distributions. WYO. STAT. ANN. §§ 17-10-222; 17-10-233. For reserves etc. see § 17-10-234.</p>

275. Listed in chronological order.

276. It is possible that the required percentage may be reduced further in some states through provision that reserves be allocated solely from patron members.

<p>“Minnesota Cooperative Associations Act” (2003 session laws). MINN. STAT. §§ 308B.001-308B.975 (2007).</p>	<p>Based on a cooperative plan “for any lawful purpose.” The general language is followed by delineated items preceded by “including.” The delineated items are themselves broad including “for any other purposes that cooperatives are authorized by law.” MINN. STAT. § 308B.201.</p>	<p>Patron vote based on block voting; bylaws may not reduce the collective patron vote to less than fifteen percent of the total vote. MINN. STAT. § 308B.545(1).²⁷⁷</p>	<p>At least one-half of the voting power on general matters shall be allocated to one or more directors elected by patron members. MINN. STAT. § 308B.411(b), (c).</p>	<p>Typical corporate process; default by majority of votes cast (assuming quorum is present). MINN. STAT. § 308B.221(1)(a)(2)(i).</p>	<p>Present; alternative method if authorized by board; no proxy (but delegate voting not proxy). MINN. STAT. § 308B.565 (which seems to allow voting by proxy).</p>	<p>Based on contributions unless otherwise provided. Patrons must have fifty percent of profits allocation in any fiscal year except articles or bylaws may reduce to fifteen percent. Same rule for distributions. MINN. STAT. § 308B.721.</p>
<p>“Tennessee Processing Cooperative Law” (effective 2005). TENN. CODE ANN. §§ 43-38-101 to 43-38-1109 (2007).</p>	<p>Requires a cooperative plan, lists specific agricultural processing and marketing functions and “for all other</p>	<p>Each patron member has one vote but may have more. “On any matter of the cooperative, the</p>	<p>At least one director must be elected by patron members, but at least fifty-one percent of the voting power on general matters</p>	<p>Typical corporate process; default is by majority of votes cast (assuming a quorum is present). TENN. CODE ANN. § 43-38-402(a)(2).</p>	<p>Present; mail or alternative method if authorized by board; not by proxy (district etc. not proxy).</p>	<p>Based on contributions unless otherwise provided and patrons must have at least fifteen percent of both allocations and distributions. TENN. CODE ANN.</p>

277. It appears Section 308B.555 may reduce the percentage further through transfer but the provision is subject to different interpretation. Subdivision 3 states: “The articles or bylaws may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote on patron membership interests under this section.”

	<p>purposes that cooperatives are authorized.”</p> <p>TENN. CODE ANN. § 43-38-201. Commissioner of Agriculture must approve articles, and its approval seems constrained to agricultural processing. TENN. CODE ANN. § 43-38-203(g)-(h).</p>	<p>entire patron members [sic] voting power shall be voted collectively based upon the vote of the majority of patron members’ [sic] voting on the issue.”</p> <p>TENN. CODE ANN. § 43-38-522. <i>See</i> TENN. CODE ANN. §§ 43-38-501(g).</p>	<p>must be allocated to directors elected exclusively by patron members.</p> <p>TENN. CODE ANN. § 43-38-606(a).</p>		<p>TENN. CODE ANN. § 43-38-522(c), (d); 43-38-521.</p>	<p>§ 43-38-901. <i>See</i> TENN. CODE ANN. § 43-38-902 (creation of reserves); § 43-38-501(e).</p>
<p>“Iowa Cooperative Associations Act” (effective 2005) IOWA CODE §§ 501A.501-501A.1216 (2008).</p>	<p>Any lawful purpose followed by a nonexclusive listing (“including but not limited to”). One of the listed items is “[f]or any other purpose that a coopera-</p>	<p>Patron members vote on a collective block vote; bylaws may not reduce patron member vote to less than fifteen percent</p>	<p>The quick rule of thumb is at least one-half of the voting power “shall be allocated” to the board members elected by patron members. However, it may be less</p>	<p>Typical corporate process; default is by majority of the votes cast (assuming a quorum is present). IOWA CODE § 501A.506.</p>	<p>Present, mail, or other authorized method. No proxy (delegates not proxy). IOWA CODE § 501A.810(3).</p>	<p>Based on contributions unless otherwise provided and patrons must be allocated at least fifty percent of profits in any fiscal year. Articles, bylaws, or patron member votes may reduce</p>

	<p>tive is authorized by law under chapter 499 ["Co-operative Associations"— "any lawful purposes" therein, expressly including agriculture and electric by discussing them elsewhere] or 501 ["Co-operative Corporations"— "any lawful business" there-</p>	<p>of the total vote. IOWA CODE § 501A.810(1).²⁷⁸</p>	<p>on certain matters.²⁷⁹</p>			<p>to fifteen percent. IOWA CODE § 501A.1005(1). Distributions are governed similarly. IOWA CODE § 501A.1005(2). See also IOWA CODE § 501A.1006 (defining net income).</p>
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278. Iowa uses the same language as Minnesota with the same effect. IOWA CODE § 501A.812(2).

279. The statutory provision follows:

A majority of the directors shall be members and a majority of the directors shall be elected exclusively by the members holding patron membership interests unless otherwise provided in the articles or bylaws.

The voting power of the directors may be allocated according to equity classifications or allocation units of the cooperative. If the cooperative authorizes non-patron membership interests, one of the following must apply:

(1) At least one-half of the voting power on matters of the cooperative that are not specific to equity classifications or allocation units shall be allocated to the directors elected by members holding patron membership interests.

(2) The directors elected by the members holding patron membership interests shall have at least an equal voting power or shall not have a minority voting power on general matters of the cooperative that are not specific to equity classifications or allocation units. IOWA CODE § 501A.703(2)(b)-(c).

	in.”].” IOWA CODE § 501A.501.					
<p>“Wisconsin Cooperative Associations Act” (effective 2006) WISC. STAT. §§ 193.005-193.971 (2007) (note that the reviser of statutes captions the chapter, “Unincorporated Cooperative Associations”).</p>	<p>Any lawful purpose (WISC. STAT. §193.201) ; BUT not “furnishing natural gas, heat, light, power, or water to its members” (WISC. STAT. § 193.203).</p>	<p>Patron members vote on a collective block vote; the articles or by-laws may not reduce the collective patron member vote to less than fifty-one percent of the total member vote. The following language appears in the same section: “Unless the articles or by-laws provide otherwise, no issue that patron members may vote upon may be approved unless, in de-</p>	<p>“[A] majority of the directors shall be elected exclusively by patron members, unless otherwise provided in the articles or bylaws.” Also provides for a non-voting financial expert. WISC. STAT. § 193.411(2)(b).</p>	<p>Assuming a quorum, by a majority of votes cast. WISC. STAT. § 193.221.</p>	<p>Present, mail, authorized alternate ballot, proxy. WISC. STAT. § 193.545(2), (3); § 193.565 (voting by proxy).</p>	<p>Patron members must have fifty-one percent of both profit allocations and distributions. The patron members, by majority vote, may authorize lower amount but not less than thirty percent. Wisc. STAT. § 193.601(4).</p>

		termining the collective vote of the patron members, the number of patron members voting to approve the issue is a majority of all members voting on the issue.” WISC. STAT. § 193.545. 280				
“Nebraska Limited Co-operative Association Act” Neb. Rev. Stat. §§ 21-2901 to 21-29,134 (2007).	For any lawful purpose EXCEPT for the purpose of being a financial institution which is subject to supervision by the Department of Banking (or which would be if chartered by the Nebraska) or the business of insurance.	Each patron participant must have at least one vote. The aggregate voting power of patron participants must be fifty-one percent, voted collectively, but may be reduced by the	At least fifty percent of the board of directors’ members must be elected exclusively by patron participants. NEB. REV. STAT. § 21-2956(1).	Corporate-style process. Approved by at least two-thirds vote (bylaws by majority). NEB. REV. STAT. § 21-29,113.	Presence required, except the articles or bylaws may provide for alternative means for voting. Proxy voting is prohibited. NEB. REV. STAT. § 21-2943.	The default rule is at least fifty percent of the net proceeds, savings, margins, profits and losses must be allocated to patron participants in a fiscal year. Articles or bylaws may reduce to no less than fifteen percent. NEB. REV. STAT. § 21-2980(2). Reserves, etc. See § 21-2980(3).

280. The articles or bylaws may provide for voting by nonmembers. WISC. STAT. § 193.555. It does not affect, however, the required percentage of patron member vote.

	NEB. REV. STAT. § 21-2904(2).	articles or by-laws to no less than fifteen percent. NEB. REV. STAT. § 21-2939(1), (2)(a).				The board of directors is authorized to make distributions to participants. NEB. REV. STAT. § 21-2981.
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