



# **Co-op Sector Regulation**

On Co-op Board Presentation  
September 1<sup>st</sup>, 2010

# Overview

- Introduction to the co-op regulatory environment
- Co-op sector/Regulator relations
- Identifying and requesting changes to the legislation
- Proposed new process and structure
- Question and answer

“It is legal because I wish it.” –Louis XIV

# **THE REGULATORY ENVIRONMENT FOR CO-OPS**

# The Act

- All Ontario non-financial co-ops are subject to the *Co-operative Corporations Act* (“the Act”)
  - ▶ Credit unions and caisses populaires follow the *Credit Unions and Caisses Populaires Act*
- Act was created in 1973 as a result of findings from the Report on Co-operatives by the Select Committee on Company Law
- Has been amended several times over the years
- Act under responsibility of Minister of Finance

# FSCO

- FSCO = Financial Services Commission of Ontario
  - ▶ Created July/98 to centralize regulatory functions
  - ▶ Arms-length agency of Ministry of Finance
- Co-ops and credit unions became part of FSCO
  - ▶ Co-ops previously been regulated by credit union and co-op services branch of MOF
- Performs all registration and regulation functions
  - ▶ Incorporation, dissolution, offering statements
- Also has a policy function, re: legislation review

# Ministry of Finance (MOF)

- Minister responsible for *Co-operative Corporations Act*
- Brings forward all amendments to the Act
- Primarily a policy function
- Had a more robust role before regulations moved to FSCO

# Regulations Working Group (RWG)

- Group of co-op sector representatives and professionals that that work to create a favourable regulatory environment
  - ▶ Identify potential changes to the Act
  - ▶ Identify operational concerns with FSCO
  - ▶ Discuss impacts /find optimal course of action
- Present proposed changes to FSCO/MOF
- Responsible to the Government Relations Committee

“Laws are like sausages. It’s better not to see them getting made.” –Otto von Bismarck

## **HOW DO CHANGES GET MADE?**

# Changes to the Act/Regulations

- Three ways this generally happens:
  1. RWG identifies changes, brings them forward to government, changes made
    - MOF does a policy review, brings changes forward as parts of other MOF bills (e.g. budget)
  2. MOF identifies changes and brings bill forward
    - Sometimes made at behest of another Ministry (e.g. Green Energy Act)
  3. Changes made by virtue of another Bill passing

# Sector Meetings

- RWG members (incl. On Co-op staff) meeting with government representatives quarterly
  - ▶ FSCO normally sends policy staff, makes operational staff available for specific issues
  - ▶ MOF sends policy staff
- Both operational and legislative/regulatory issues are discussed at these meetings
- They are unique in the co-op sector, and also unique for FSCO

# Challenges with the process

- From the government side:
  - ▶ FSCO/MOF require rationale and support material for requested changes, which often changes
  - ▶ Legal & policy review at both FSCO/MOF required
  - ▶ Changes brought forward as parts of other bills
  - ▶ Want assurance that impacts have been thought out & that entire sector stands behind change
- Process is very slow as a result
- Also challenges with co-op sector part of process

“Democracy means government by discussion, but it is only effective if you can stop people talking.” – Clement Atlee

# **THE SECTOR'S DECISION MAKING PROCESS**

# How does the sector decide?

■ The ideal scenario:

1. Proposed changes from numerous subsectors or professionals come forward to On Co-op
2. Presented to Regulations Working Group
3. Discussion ensues, both on form and impacts
4. Consensus is reached through civil discourse
5. Amendments are brought forward to next sector meeting with FSCO/MOF

■ Simple, right?

# Unfortunately not.

- There have been challenges with this process:
  - ▶ Consensus is difficult to reach on some issues
  - ▶ RWG not totally representative of all sectors
  - ▶ Hard to balance sector reps vs. professionals
  - ▶ Lack of knowledge or background for some reps
  - ▶ Perceived lack of accountability
    - ◆ From reps back to co-ops/sectors
    - ◆ From committee to GR Comm. to On Co-op board
  - ▶ Perceived lack of adequate consultation on issues

# Two Key Illustrative Issues

- Challenges with our process keenly reflected in two recent discussions:
- Should the sector advocate for the removal of the “business with members” (aka 50% Rule) provision?
- Should the sector advocate for share capital co-ops to have the choice of share structure between par value or non par value, instead of being restricted to par value only?

“If you can't describe what you are doing as a process, you don't know what you're doing.” – W. Edward Deming

# **PROPOSED NEW STRUCTURE AND PROCESS**

# Review time

- Proposed new terms of reference

# Consultation: Goals

- Goal is to obtain a representative sample of opinions from the sector
- Weighted towards sectors that are impacted, although input will be accepted from all
- Basic initial scan has been done for the two issues
  - ▶ Determine which types of co-ops and sectors are impacted by changes
- Process designed for these two issues, but can be used for future issues

# Consultation: Process

- Survey will be designed to collect input (Sep)
- Get federations to provide position (Sep-Oct)
- Representative stratified sample of co-ops not in federated systems will be approached (Sep-Oct)
- Information will be collected/analyzed (Oct-Nov)
- Regs group will assess the outcomes, recommend a position (Nov-Dec)
- Board will be presented with recommendation (Nov-Dec)

# Process continued

- FSCO will be informed of consultation outcomes (Dec)
- Additional collection of board resolutions as needed (Oct-Feb)
- An intern will be hired to coordinate this work and assist with other research and policy projects related to Co-op Development and Public Affairs

# Questions?

 Thank you!