

## Key Steps Relating to the Issuance of Securities<sup>1</sup>

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### Definition

A security is defined under *The New Generation Co-operatives Act* (hereinafter referred to as the *New Gen Act*) as including a preferred share, a debt obligation of a co-operative, and a certificate evidencing that share or debt obligation, and, for the purposes of Parts XVI, XIX, and XXII, includes a common share and member loan.

### Why Do NGCs Issue Securities?

NGCs will need to assemble sufficient financing to develop and initiate the operation of their businesses. It is unlikely that the total capital required could be borrowed from financial institutions; therefore, the co-operative must seek investment from its members, and possibly the public. Capital raised in this manner involves the issuing of securities. These securities can be in the form of:

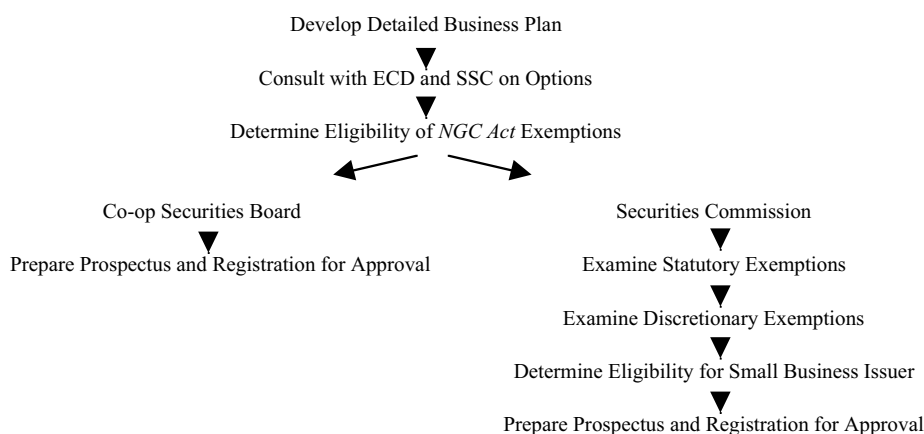
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<sup>1</sup> This paper does not necessarily represent the views of the Saskatchewan Securities Commission, nor does it constitute a legal opinion. Readers are advised to seek professional legal advice before proceeding.

<sup>2</sup> With acknowledgement to previous materials prepared by staff of Economic and Co-operative Development.

- *Common shares*, which may be sold only to members;
- *Preferred Shares*, which include the following two types:
  - *Member Right Shares*, which may only be sold to members, which carry no vote on election of a director, and which obligate its holder to provide the co-operative a specific good or services or give the holder the right to receive from the co-operative a specific good or service; and
  - *Preferred Shares in a Series*, which may be sold to members and the general public, and may include specified rights and restrictions;
- *Member Loans*, including any agreement by which a member agrees to loan money to the co-operative; and
- *Other Debt Instruments*, including bonds and debentures issued to members or the general public by which the co-operative agrees to repay, with or without interest.

**Part XXII—Security Issues** of the *New Gen Act*, together with the Regulations, set out the rules governing how an NGC can issue securities:



## Develop a Business Plan

Complete a business plan, including details of sources of financing and a detailed explanation of the business operations. For larger offerings, conduct a feasibility study.

## Consultations

The author encourages advance consultation with issuers and their professional advisors to discuss their proposal, and for assistance in determining whether the securities qualify for existing exemptions or if a prospectus may be required. Please contact the Deputy Director, Corporate Finance, at (306) 787-5867.

## Steps to Obtain Approval to Issue Securities

### *Approval to Issue Securities*

Unless the security is exempt under the *New Gen Act* or Regulations, the co-operative must apply to the Co-operative Securities Board (the Board) regarding the issuance of securities. (The Board has the legislated responsibility for reviewing and approving the securities offerings of co-operatives and setting such terms and conditions on the approval as it sees necessary.) A co-operative also has the option under the *New Gen Act* to advise the Board by written notice that all trades by the co-operative in a proposed offering of the securities specified in the notice will comply with *The Securities Act, 1988* (hereinafter referred to as the *Securities Act*). This option is an important change from how securities offerings are dealt with under *The Co-operatives Act, 1996*.

**As a first step, a co-operative should determine if the proposed issue of securities is exempt from any review under the *New Gen Act*.**

### *New Generation Co-op Act/Regulation Exemptions*

Examine the possibility of whether the offering of the securities could be exempt under the *New Gen Act* or Regulations. Exemptions include:

- A. bonds, debentures, or other indebtedness of or guarantees by a trust corporation or a loan corporation licensed pursuant to *The Trust and Loans Corporations Act* or an insurance company licensed pursuant to *The Saskatchewan Insurance Act*;
- B. certificates or receipts of a trust corporation or a loan corporations licensed pursuant to the *Trust and Loan Corporations Act*;
- C. bonds, debentures, or other indebtedness guaranteed by the government of Canada or of any province or territory of Canada;
- D. any securities where the purchase is a requirement of membership in the New Generation Co-operative as set out in the by-laws and the total value of those securities purchased by the member does not exceed \$1,000;
- E. securities sold to a trust or loan corporation, an insurance corporation, a credit union, or a bank;
- F. prepaid accounts where a member pays for goods and services in advance of delivery;
- G. shares issues in payment of a dividend, or interest payment on shares, or a patronage dividend;
- H. securities sold only to members of the co-operative, where all the members are also directors of the co-operative;
- I. securities sold only to members of the co-operative where:
  - i. the proceeds are used to purchase assets that are used solely by or for members, and
  - ii. the cumulative amount raised using this exemption does not exceed \$100,000;
- J. securities sold only to members of the co-operative where:
  - i. the proceeds are used to pay any of the following costs:

- a. costs related to the preparation of feasibility studies, business plans, and other similar documents, and
  - b. costs related to the preparation of any materials used or costs incurred in relation to an offering of securities by the co-operative; and
- ii. the cumulative amount raised using this exemption does not exceed \$100,000.

**If the co-operative is unable to make use of these exemptions, it should look to the exemptions available under *The Securities Act*.**

As previously indicated, the co-operative has the ability to have its trades done in compliance with the *Securities Act* if it wishes.

## **Saskatchewan Securities Commission**

### *The Securities Act, 1988—Statutory Exemptions*

If the co-operative determines that a statutory registration and prospectus exemption under the *Securities Act* could be applicable to the proposed offering of securities, the co-operative can elect, by written notice to the Board, to have all trades in the proposed offering specified in the notice comply with the *Securities Act*. These exemptions are included in detail in the “How To Raise Capital Using Exemptions” paper prepared by the Securities Commission. To receive a copy of this paper, contact the Saskatchewan Securities Commission at (306) 787-5299; alternatively, the information is available on the Saskatchewan Securities Commission web site at: [www.ssc.gov.sk.ca](http://www.ssc.gov.sk.ca).

### *Discretionary Exemptions*

If the issuance of the securities does not fit within the statutory exemption from the registration and prospectus requirements of the *Securities Act*, then the co-operative can apply to the Commission under Section 83 of the *Act* for a discretionary exemption waiving the registration and prospectus requirements of the *Securities Act*. The Commission has the power to grant a discretionary exemption from both the pro-

spectus and registration requirements of the *Act* under this section. To apply for a discretionary exemption, the co-operative must follow the procedure set out in Saskatchewan Policy Statement 12-601, “Applications to the Saskatchewan Securities Commission.” To receive a copy, contact the Saskatchewan Securities Commission at (306) 787-5299; alternatively, the information is available on the Saskatchewan Securities Commission web site at: [www.ssc.gov.sk.ca](http://www.ssc.gov.sk.ca).

It is possible to apply to the Board for a discretionary exemption under *The New Generation Co-operatives Act*. As guidance in preparing the application, the New Generation Co-operative should follow the procedures set out in Saskatchewan Policy Statement 12-601. The application should be sent to the attention of the Secretary to the Board, c/o The Saskatchewan Securities Commission.

Before granting a discretionary exemption under Section 83 of the *Securities Act*, the Commission must first be satisfied that it is not prejudicial to the public interest to do so. There is no guarantee that the Commission will grant a discretionary exemption when applied for. The Commission will consider whether there are other factors in place for public protection, making prospectus and registration requirements of the *Securities Act* unnecessary.

Discretionary exemptions are often granted where a trade almost meets the requirements of a statutory exemption and the policy considerations behind that statutory exemption are met, but, for a technicality, the trade does not fall within the statutory exemption.

The Commission may grant a discretionary exemption in cases where there is a special relationship between the NGC and the investors, and, through this special relationship, the investors have a special knowledge both about the NGC and its promoters. In this case, the investors may not require the protection afforded by registration or the disclosure normally made in a prospectus.

Discretionary exemptions may be granted in cases where the Commission is satisfied investors are knowledgeable, sophisticated, can protect themselves, and don't require the protection of the *Securities Act*.

In general terms, the Commission is open minded as to when it will grant a discretionary exemption. It must be satisfied that the results will be that the same level of public protection is provided, albeit in a different manner, as would be present if the registration and prospectus requirements of the *Securities Act* had been complied with. Discretionary exemptions usually have terms and conditions attached to them, and may, or may not, require the use of an offering memorandum.

The sale of securities by an NGC pursuant to a discretionary exemption does not in and of itself trigger any Continuous Disclosure Requirements or Resale Restrictions unless such requirements are built into the terms and conditions of the discretionary exemption received from the Commission. Therefore, an NGC will only become subject to those Continuous Disclosure Requirements and Resale Restrictions that are imposed as a term of the discretionary exemption. An issuer should look to the terms of the discretionary exemptions for its requirements in this regard. It is usual for the Commission to build in these types of requirements. This is the same with respect to the report of sales that must be filed with the Commission after the use of the discretionary exemption. The terms of the discretionary exemption received must be reviewed to find the NGC's requirements in this regard.

The most common discretionary exemption under Section 83 that could be used for an NGC would be the Community Ventures Exemption.

#### *Community Ventures Exemption*

This policy statement allows the NGC to apply for and the Commission to exempt the NGC from the registration and prospectus requirements of the *Securities Act*.

The conditions that apply under the Community Ventures Exemption are:

- a. the project must be located in a small community;
- b. the co-operative cannot raise more than \$1 million;
- c. the investors must live within a certain geographic area of the small community;
- d. all salespersons and promoters must live within the small community;
- e. there is no limit on the number of investors; and
- f. an offering memorandum approved by the Commission.

For complete information on this exemption, refer to the Community Ventures Information Package available by contacting the Saskatchewan Securities Commission at (306) 787-5299.

For information about the use of exemptions, call (306) 787-5879 (Legal Branch).

## Prospectus Distributions

**Should the New Generation Co-operative find that there are no statutory or discretionary exemptions available for its proposed security offering, then it is probable that a prospectus will be required.**

A prospectus is a legal document by which securities are offered for sale. The prospectus must contain full, true, and plain disclosure of all material facts relating to the securities issued. It provides prospective investors with sufficient information to enable them to make an informed decision about whether or not to purchase any of the securities offered. The Securities Regulations establish the details as to the form and content of the prospectus.

If this is the avenue taken, the co-operative again has a choice to make: whether the offering will be subject to the *New Gen Act*, or whether an election will be made to have the offering reviewed and subject to the *Securities Act*. In either case, the co-operative needs to do a fair bit of work in advance of preparing and filing a prospectus. This work would include a detailed business plan and a feasibility study.

## The Disclosure Document

The information disclosure requirements for a prospectus filed under the *New Gen Act* and the *Securities Act* are essentially identical. The form to be followed in preparing a prospectus for a New Generation Co-operative is the same in either case, Form 13—Information Required in Prospectus of Industrial Company. This form is found in The Securities Regulations. The Board has directed that this form is to be followed if the prospectus is filed under the *New Gen Act*, and subject to review and approval by the Board. This same form is compulsory if the New Generation Co-operative elects to have the distribution subject to the *Securities Act*.

## The Review Process

The review process for prospectus filings is the same under the *Securities Act* and under the *New Gen Act*. The materials are to be filed with the Deputy Director, Corporate Finance, with the Commission. The Deputy Director also serves as Secretary to the Co-operative Securities Board. The prospectus and any supporting materials will be reviewed in detail by the staff of the Commission. A letter requesting changes or additional detail will normally be provided within ten working days of receiving the prospectus. Thereafter, it will be up to the New Generation Co-operative to resolve the comments. A revised prospectus incorporating the changes will then be required for further detailed review. Additional comments may be raised once more, with a further draft filed for review. This review process can take from six to eight weeks.

Once the staff are satisfied with the disclosure, and the selling process, as outlined below, has been appropriately addressed, approval to sell the securities will be given by one of two means. If the filing was made under the *Securities Act*, the Deputy Director, Corporate Finance, will issue a final receipt for the prospectus and selling may then proceed. If the filing has been made under the *New Gen Act*, the deputy director will provide a copy of the final prospectus along with a recommendation to

the Board. Conditions of approval may also be provided to the Board. If the Board is in agreement with the recommendations, they will approve the prospectus, and sales may commence.

For further information on the prospectus processes, contact the Deputy Director, Corporate Finance, at (306) 787-5867.

### **Registration and the Selling Process**

A major consideration for a New Generation Co-operative will be the manner in which it contemplates the selling of the securities offered by prospectus. Under the *Securities Act*, the securities must be sold by a registrant company. Further, individuals selling the securities must also be registrants.

Frequently, smaller issuers are unable to make arrangements with a registrant to sell the securities offered by their prospectus. To assist these smaller issuers, the Commission has approved General Ruling Order (GRO) 31-902—Saskatchewan Small Business Security Issuer. This GRO relaxes the normal registration requirements and allows the issuer to register as a security issuer; in other words, it will be offering its own securities for sale. The individuals designated by the issuer to sell the securities on its behalf will be required to take a one-day sales course provided by the staff of the Commission, and then must write and pass an examination, taken the same day as the course. This course provides basic information on the dos and don'ts of selling securities. Additional detail on this GRO follows.

The Board has indicated, in meetings held to discuss New Generation Co-operatives, that the selling issue is also of concern to them. They have indicated that they, too, will have concerns with how the securities may be sold, and it is likely that they will require the New Generation Co-operative and its sales force to follow the same requirements as set out in GRO 31-902.

To date, there are no precedents in this area.

## Ongoing Continuous Disclosure Requirements

Once a New Generation Co-operative has raised money by prospectus, it will be required to communicate with its security holders on a regular basis. If the offering has been done under the *Securities Act*, the ongoing reporting requirements are statutory, and would include providing interim quarterly financial statements and annual audited financial statements, as well as annual proxy and information circular materials.

If the offering has been done under the *New Gen Act*, co-operatives should anticipate that the Board will make similar reporting mandatory as a condition of approval for the offering. Again, at this time there are no precedents to which we can refer for additional guidance.

## Multijurisdictional Issues

It is possible that a New Generation Co-operative will wish to raise capital in more than one province, for a variety of reasons. In these scenarios, it is important that careful consideration be given as to which legislation the offering will be filed under in Saskatchewan. If the same prospectus is to be filed in other provinces, it will be reviewed under securities legislation in those provinces. There are co-ordinated mutual reliance review systems for reviewing offerings filed in more than one province, provided that the offering is filed under securities legislation in all provinces. This type of co-ordinated review is not possible if it is filed in Saskatchewan under the *New Gen Act*, but filed elsewhere under the securities legislation of the other provinces. This will create a significant problem for the review of the securities filing. We encourage discussion of this issue with the officers of the New Generation Co-operative well in advance of filing a prospectus. Contact the Deputy Director, Corporate Finance, at (306) 787-5867.

## **General Ruling Order 31—902 Saskatchewan Small Business Securities Issuer**

If your NGC does not fit the criteria for the exemptions above, this general ruling order can be used to relax the registration requirements of the *Securities Act* where the directors, officers, or others will be selling the securities, and the NGC meets the following criteria:

- a. is incorporated, continued, organized, or established pursuant to the laws of the Province of Saskatchewan;
- b. has its registered office and head office located in Saskatchewan;
- c. carries on a substantial part of its businesses in Saskatchewan, in that 75 percent of its business assets are or will be located in Saskatchewan, and 75 percent of its expenses will be incurred in Saskatchewan;
- d. is controlled by residents of Saskatchewan, in that 75 percent of its voting securities are held by residents of Saskatchewan; and
- e. two-thirds of its promoters and directors are residents of Saskatchewan.

While this General Ruling Order relaxes the registration requirements for the NGC, it would still require the use of a prospectus to issue the securities. For complete information on this exemption, refer to the Saskatchewan Small Business Securities Issuer Package that is available by contacting the Saskatchewan Securities Commission at (306) 787-5876 (Registration Branch) and on the Saskatchewan Securities Commission's web site at [www.ssc.gov.sk.ca](http://www.ssc.gov.sk.ca)