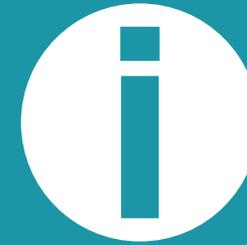


Using Offering Statements to Raise Capital



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Introduction

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

Some offers are free of regulation if they meet the requirements for exemption from offering statements. However, where an exemption is *not* available, an offering statement must be prepared and delivered to each prospective purchaser. This statement must also be submitted to the Financial Services Regulatory Authority (FSRA). If FSRA approves the document, it will then issue a receipt for it, and that receipt is required before the co-op may begin selling securities.

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

In 1971 the Ontario Legislature's Select Committee on Co-operative Law recognized that the Ontario Securities Commission's rules for public offerings for business corporations were entirely inappropriate for co-ops. As a result, the offering statement process was recommended and then put in place through the 1974 Act that still governs co-ops in Ontario.

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

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

When considering whether it must prepare an offering statement, a co-op must first look at the number of security holders it has. If it has more than 35 security holders or if the offering would result in the co-op having more than 35 security holders, it must prepare an offering statement. Co-ops or offerings that would result in fewer than

35 security holders do not have to prepare an offering statement to sell securities.

Even when an offering will result in more than 35 security holders, under the following conditions an offering statement does *not* need to be prepared:

- The co-op has filed a prospectus for the securities with the Ontario Securities Commission (the body that oversees the offering of securities for business corporations). A very large co-op might use this process to access capital in the public markets or to create a market for the resale of its shares. Neither of these options would be available through the offering statement process.
- The co-op has decided, through its bylaws, to issue shares or loan certificates for part or all of a patronage return.
- A member purchases securities for a total price of not more than \$1,000 per year and \$10,000 in total.
- All securities issued to members of the co-op total \$200,000 or less.
- Securities are issued to a government entity, a financial institution, a broker, an

- There are over 1,300 co-operatives, credit unions and caisse populaires incorporated and operating in Ontario, with 1,900 locations in 400 communities.
- In 2012 alone, 73 new co-ops incorporated in Ontario.
- Housing is Ontario's largest co-op sector (45%), followed by Financial Services (17%), Child care (17%) and Agriculture (6%).
- The co-operative sector in Ontario represents a very conservative \$30 billion in assets (2007).

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investment dealer or securities dealer who is registered under the Ontario Securities Act.

What Needs to be Included in the Offering Statement?

A co-operative is required to provide “full, true and plain disclosure of all material facts related to the securities being offered.” This means that the co-op needs to provide sufficient information to investors to allow them to make a reasonably informed decision about whether or not to invest.

Other sources that can assist co-ops in drafting offering statements are the regulations under the Co-operative Corporations Act; a consultant, lawyer and/or accountant with relevant experience; or the offering statement templates available at ontario.coop.

A co-op’s offering statement must include the following:

- The co-operative’s name and incorporation number as well as the date of incorporation as it is set out in its Articles of Incorporation.
- The address of its head office.
- The name, place of residence and principal occupation of each of its directors and officers as well as the title of each officer.

- A description of the business carried on by the co-operative and its subsidiaries, if any, and the business each of them intends to carry on.
- A summary of the co-op’s most recent business plan, if available.
- A description of the co-op’s capital structure (including its authorized capital and issued capital) and the rights, privileges, conditions and material characteristics of the securities being offered.
- A description of all the rights, privileges, conditions and material characteristics of the securities being offered.
- A description of how the proceeds from the sale of the securities will be used. If the proceeds will be used for *investment purposes*, a description of the co-operative’s investment policy is required. If the proceeds will be used to make an *investment in specific businesses*, a description of the nature of the businesses, their management and their capital structure is required.
- If the offering is being made in connection with a plan of reorganization, a purchase and sale or an amalgamation, a description of the general effect of these proposed changes and when they will be made.
- The details of the method of selling the securities and of any commission payable or discount allowable on the sale.
- A description of the market, if any, on which the securities may be sold. If there is no market, a description of how the securities will be redeemed is required. (For many co-operatives, the securities that are offered are not available on any market. They are available only through the offering statement process.)
- A statement of the maximum and minimum amount of the offering and, where applicable, the maximum or minimum amount of any subscription. The co-op must also provide a description of what will happen to the proceeds if the minimum amount of the offering is not raised (e.g., the money raised will not be spent until the minimum is raised or it will be given back to the investors if the minimum is not raised).
- The names of each transfer agent and registrar, if any, and the location of each register of transfer (See Chapter 4 of *OCA’s Guide to the Act* for more information). This is required if the co-op uses a third party to accept the money raised on behalf of the co-op.
- The amount and particulars of any securities, mortgages, bonds, debentures

- **Three recent studies demonstrate that co-operative enterprises have significantly higher survival rates than other business corporations. In fact, a co-operative is twice as likely to be in operation after 10 years.**
- **Ontario co-ops employ and provide benefits to 15,500 people (greater than the total number of Ontarians employed in production of goods).**
- **1.4 million Ontarians are members of a co-operative, credit union or caisse populaire (more than 10% of the population).**

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- or other debt obligations that must be paid back before the securities are issued.
- A description of any material legal proceedings to which the co-operative or its subsidiary is a party.
- A description of any material interest of any director, officer, or employee of the co-operative or its subsidiary in the operations of the co-operative generally or in the securities being issued.
- A description of every material contract entered into within two years before the date of the offering statement.
- A description of the risk factors of the co-operative or the particular project that the securities will be financing and the risks associated with the securities being offered.
- A description of any substantial changes to the operating financials of the co-operative during the three years before the date of the offering statement or since the co-operative's date of incorporation, whichever is the shorter period. (The Act indicates that this description has to be included or outlined only to "the extent reasonably practical." In other words, the description does not have to be exhaustive or complete but only what is reasonable in terms of the co-op's capacity.)
- The amount of dividends, patronage returns or other distributions if they were paid out, or declared and not paid out, at any point in the five years before the date of the offering statement, or since the co-operative's date of incorporation, whichever is the shorter period.
- The name and address of the auditor of the co-operative, if applicable.
- A description of any other material facts.
- A table of contents of the information contained in the offering statement.
- If an offering statement uses a report, opinion or statement, the consent of the person who prepared it.
- The co-op's financial statements if it has completed a financial year, along with an auditor's report (if this is required because the co-op is required to undergo an audit) and interim un-audited financial statements as of a date within 90 days of filing the offering statement.

Other Requirements

The following statements in bold must also be used. The offering statement templates, available from the OCA website, show how these are to be prepared. (Search the site for "offering statement").

The following must appear in conspicuous type on the front cover:

No official of the Government of the Province of Ontario has considered the merits of the matters addressed in this offering statement.

Investors should not rely on any information other than what is contained in this offering statement.

The information in any projections or pro forma statements contained in this offering statement may vary materially from actual results.

If there is no market on which the securities may be sold, the following statement must appear in conspicuous type on the face page (the first page of the document inside the cover):

There is no established market through which these securities may be sold.

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

The foregoing constitutes full, true and plain disclosure of all material facts relating to the securities offered by this offering statement as required by section 35 of the Co-operative Corporations Act.

- There are some 49,000 co-operative volunteers across Ontario, including over 10,000 board members who are actively involved in governing and leading co-ops, credit unions and caisse populaires in Ontario.
- World-wide, co-operatives operate in over 90 countries, employ over 100 million people and are supported by over 1 billion members.

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How Does FSRA Approve the Draft Offering Statement?

Once the offering statement is reviewed and FSRA has determined that it meets the requirements of the Act, a receipt is attached to the offering statement by FSRA and the entire receipted offering statement is returned to the co-op. When the receipted statement is received, the co-operative may begin selling the securities outlined in the offering statement.

FSRA can refuse to provide a receipt if, in its view:

- The offering statement or any of the supporting documentation fails to meet the requirements of the Act.
- The statement contains any information (a promise, estimate or forecast) that is false or misleading.
- The statement conceals or leaves out any material facts that would be necessary to make any statement true, **or**
- The proceeds of the sale of securities will not be sufficient to accomplish the purpose of the statement.

If FSRA refuses to provide a receipt, it will normally provide a letter detailing its concerns and inviting the co-op to redraft the statement in a way that addresses these problems.

If FSRA ultimately refuses to issue a receipt, it must offer the co-op a chance to be heard on the issue. The co-op will then be given the opportunity to remedy the situation and correct the statement or to make the case that the statement is satisfactory in its current form.

The receipted offering statements are kept on file at FSRA's office and must also be made available during business hours at the co-op's head offices. These are considered public documents and, as such, must be made available to the public.

Resources

Refer to sections 34-37 of the Act.

FOR MORE INFORMATION, CONTACT

Ontario Co-operative Association
30 Douglas Street
Guelph ON N1H 2S9
Phone: 519.763.8271
info@ontario.coop
ontario.coop

More resources are available at:
CoopZone Network
coopzone.coop

This is one of a series of FACTSheets created by OCA providing general knowledge, best practices, and sector-specific information.

Get the full list of FACTSheets online at ontario.coop/documents_downloads