MEMORANDUM

TO: Committee Members, Advisor, and Observers
Uniform Cooperative Association Act

FROM: Peter Langrock, Chair
DATE: November 1, 2006

SUBJECT: December 2, 2006 meeting; Questions for Consideration by the Committee

The Reporters have reviewed the Reporters' Notes and other materials to assemble questions and topics for which they believe the Committee needs to address or which they would like further drafting guidance. An effort has been made to prioritize these items for the convenience and efficiency of the Committee work. There are about a dozen items in the highest priority, ten items in the "medium" category, eleven items in a lower priority, and sixteen items in a category that can be interpreted as "Did the reporters get it correct?" or "Are you sure?" category. This memorandum should not, however, be interpreted as a constraint of discussion on other topics. While these priorities will not necessarily be the agenda for the December meeting in the order they are listed, they are helpful to use to focus the meeting discussion and assist your preparation for the meeting.

The draft for the December 2006 Committee meeting, which was distributed electronically on Monday, October 30, adds organization to the Act and addresses the issues that have been discussed in prior Committee meetings as well as comments from the floor at the Annual Meetings (with the exception of what types of businesses should be excluded from the Act). In preparing this draft, almost every section of the Act has been revised but many revisions are "non-substantive." Nonetheless, as we approach completion of the project careful attention to wordsmithing by the Committee members, advisor, and observers is important.

It is tentatively suggested, dependent on the outcome of the December meeting, that the Spring Drafting Meeting (not the December meeting) will be devoted to a line-by-line reading of the draft paying particular attention to (1) whether the language "unless otherwise provided" appears in all necessary places; (2) answering specific questions raised by observers in the next draft; (3) discussion of any new language reflecting policy decisions made at the December meeting; and (4) discussion of exclusions (*see* Addendum C for illustrative list of current cooperative types).

A. HIGH PRIORITY

1. Name of Act and the Association. Section 101.

The name of the "association" and the Act needs to be resolved. Concerns have been expressed about co-op branding. Suggestions have been to add: "mixed," "hybrid," "unincorporated," "expanded" and "limited" to the name. If a change is to be made, the Reporters lean toward "limited cooperative association."

And, should the Act create a new abbreviation "CA" or "C.A."? This resembles the postal

abbreviation for California. Is there another possible shorthand? If "limited cooperative association" would be used, the abbreviation could be "LCA." Is an abbreviation really necessary? If the name is changed, an addition to Section 108 may be necessary.

2. Nature and Purpose of the Association. Section 104.

There have been suggestions from the Committee on Style, from the annual meeting floor and others, including individual members of, and advisors to, the Drafting Committee that somehow the Act needs to have a description of the cooperative association. The Reporters have endeavored to do this in the December 2006 meeting draft by rewriting Section 104. These revisions and the approach taken by the Reporters need to be examined by the Committee.

3. Number of Organizers/Number of Participants to Avoid Dissolution. Sections 301, 401 and 1102(3). That there be two organizers, two patron participants to commence business, and two participants to avoid dissolution, except for a wholly owned subsidary.

The Reporters believe they need further guidance in this area.

Section 301 requires there to be 2 organizers. Section 401 requires two patron participants to commence activities/business. Section 1102(3) provides for dissolution if there are fewer than 2 participants. The issues raised by these provisions have been discussed at length by the Committee, but full resolution has not been reached on the issues, especially the number of organizers and the number of members needed to avoid dissolution.

The Committee also directed that this draft should provide that only one organizer was necessary for a wholly-owned subsidiary of an existing cooperative. Several unexplored issues arose when the Reporters attempted to draft the language to effectuate that purpose. *First*: At what point is "wholly-owned" measured? At the moment of formation? Is it an ongoing requirement? *Second*: Was the Committee direction really intended to address the minimum number of participants rather than the minimum number of organizers? The Reporters thought it necessary to ask the Committee for clarification before further drafting on this Section.

Even though the trend is toward one organizer, is it more in keeping with cooperative concepts to have more than one organizer?

A related issue raised and discussed in conjunction with this Section concerns "shelf"cooperatives but the Reporters believe the Committee has made the policy determination that no "shelfs" (or "shells" awaiting further action but ready to use) should be provided in the act. It raises a question, however, about whether there should be a time-limit on the time between when a cooperative association is organized and before business is commenced.

4. Voting by Participants and Related Matters. *E.g.*, Sections 411 and 1406.

The Reporters have revised the voting provisions of the Act several times since they received their last instructions from the Committee. An example is Section 1406 where the Reporters utilize the approach they have developed that they believe is consistent with the Committee's instructions but has also been drafted to address various "glitches" they discovered in their first attempts to follow the Committee's instructions. The Committee needs to examine the approach drafted by the Reporters to be certain they have not departed from the Committee's intention. The voting formula in Section 1406 (that is repeated in other places in the Act) is a central part of the Act and helps

establish the relational balance between patron participants and investor participants. In Section 1105 (Voluntary Dissolution), the Reporters permitted the organic rules to increase the vote required of patron participants if there are investor participants. This is not done elsewhere but was done so in this Section because of a sense an association might wish to make voluntary dissolution difficult.

Section 411 (and possibly other Sections) may need to be revisited and discussed within the matrix of rights and powers. As drafted, the equity investors have fewer rights and potentially less negotiating power on an on-going basis than do lenders who regularly require veto authority over a variety of matters.

As drafted, this Act may be the worst of both worlds for investors and patron members attempting to reduce their cost of capital and formulate a viable economic organization. The Committee may wish to examine again (a) reducing the patron majority block (making the organization have the look and feel of an LLC); or, probably more viably, (b) at least providing for true class voting providing the investors the ability to block / veto (like lenders) but not dominate affirmative action.

5. (a) Corporate Versus Contract Characteristics. *See, e.g.,* Section 501. Throughout the Act but focused in Section 501. (See also "medium priority" no. 7).

There is a policy question throughout the Act as to whether the Act should lean toward corporate characteristics (statutorily compelled provisions) or contractual characteristics more in the nature of a partnership and LLCs. This is a fundamental question that has been discussed at length throughout the meetings but has not been fully resolved by the Committee. It affects dramatically which provisions of the Act should be compulsory and which ones can be varied by the organic rules.

The closer to a fully consensual (negotiated) contract approach that is taken, then fewer provisions in the statute should be mandatory. The fewer provisions that are mandatory, the more room there is for organizers of a cooperative association to move away from the philosophy the thinking behind this Act seems to be trying to promote but, perhaps, would provide support for those who object fundamentally to the statute and the cooperative association it authorizes as damaging the co-op "brand."

Has the Committee in making the effort to preserve an underlying cooperative philosophy and structure under this Act inadvertently moved away from a fundamental contractual nature of the cooperative itself? This would not seem to be the preferred direction based on looking at a typical cooperative statute and the recent statutes that have caused the Conference to look at a uniform act in this area. Those statutes clearly provide for such items as one person - one vote (or limited modifications of that), returns based on patronage and other items that clearly have parameters built around them by statute. The more that is controlled by statute, however, the less contractual would seem to be the resulting entity.

A second question is whether the Act should permit or provide one way for patron participants and another for investor participants? This would seem to run contrary to the direction of thinking about this Act, but the patron participants may seek the more contractual relationship of a true cooperative while investor participants may be from a group that is more accustomed to the neatly ordered predetermined corporate concept (but not if they viewed themselves as venture capitalists or contractual debt holders). Thus, there could be room for different approaches for the

different classes of participants under this Act. Is this already permitted by provisions requiring class voting and super majority votes? Other unincorporated acts provide for derivative actions just as this one does. Is that inconsistent with contractual principles?

(b) Amendments to the Organic Rules if "Contracts" Are Part of the Organic Rules. Section 1401(b) and Section 501.

Some cooperatives have specific marketing or other contractual provisions in their organic rules beyond the broader concept of the organic rules being part of the contract between a cooperative and its "members" (participants). The Reporters have attempted to address this in subsection 1401(b) but recognize the language they have developed may not adequately protect the holders of contractual rights with respect to intangibles. For example, payments to be made to investor participants could be made the subject of a part of the organic rules. Would it not be improper for an amendment to the organic rules to change those payments at least without the consent of the holders of the rights to the payments?

Section 501 is an attempt to codify existing cooperative law. There is a body of cooperative common law that establishes that the basis of the relationship between a cooperative and its members (and in that context, but not as drafted, between members). Speculatively this would seem to support the cooperative principle that a cooperative is for the mutual benefit of its members and may well reflect that the anthropological roots of cooperative law pre-date modern corporate law (as well as the idea from Economics that all organizations can be reduced to a nexus of contracts). The Drafting Committee has not yet reviewed this language. Subsection (b)(4) is intended to include, *e.g.*, proprietary leases in a housing cooperative. Former subsection (b)(4) that listed marketing contracts as part of the contractual relationship between a cooperative association and a participant was intentionally deleted from the list of items making up the contractual relationship, but the Reporters added a new Section 501(c) that needs to be reviewed by the Committee and may add confusion to this issue.

6. Marketing Contracts. Article 6.

Prior drafts had language that would seem to intend that traditional agricultural marketing contract concepts were also extended to purchasing and supply contracts. The Article did not, however, fully develop the extension. This draft confines the concept to traditional marketing contracts.

Questions the Committee should address are: (1) Should the types of contracts envisioned by this Section be available to all kinds of cooperatives organized under this statute? (2) If so, in connection with discussion of the breadth of the act, consideration should be given to whether the language of the current draft (or other language that might be developed in the future) is broad enough to cover the activities of other types of cooperatives, such as housing cooperatives or worker owned cooperatives?

If the act authorizes contracts for purposes other than marketing, additional provisions or a separate section dealing with other types of contracts may be required (such as purchasing cooperatives).

7. Antitrust Exemption. New Section 1501.

The Reporters have endeavored to take information provided by NCFC to provide for a possible antitrust exemption under this Act. The NCFC suggestions were extremely helpful but the Reporters integrated comments made in a memo from NCFC with the statutory language NCFC provided. At least two observers have said the section has been "over lawyered." The Committee needs to review this language.

8. Securities Law Application. New Section 907A.

The Reporters have attempted to develop better language for the limited securities law exemption. The Committee needs to review this language.

9. Information Available to Participants – Privacy Issue. Sections 113 and 405.

The interplay between the information a cooperative is required to keep (Section 113) and the information available to participants under Section 405 (especially (b)) could allow a participant to obtain private information about other participants (such as their contributions to the cooperative association that might be interpreted to include amounts of patronage earned). This has been guarded information in some types of cooperative circles.

10. Committee Approval of Allocations and Distributions. Section 717(c).

The Reporters were directed by the Committee to replace the word "distribution" with "allocation" in the list of items a Committee may not approve (unless the organic rules provide otherwise) except if the Board has established a formula for determining distributions and allocations so the Committee's actions become purely ministerial. This draft utilizes both terms. On reflection, the Reporters could not see why there should be different treatment between the two actions.

11. Dissociation. Section 1001.

The Reporters have substantially reworked parts of Section 1001. The Committee should review the results.

Section 1001(a)(2)(B)(i) now makes it a wrongful termination if a participant withdraws by his/her express will unless otherwise provided in the organic rules. Does this violate the cooperative principal of voluntary association?

12. Class Voting.

On matters (such as amendments to the organic rules) should there be class voting giving an adversely affected group, class or district the right to veto the proposed action?

In what instances, if any, should class voting be permitted or required?

B. MEDIUM PRIORITY

1. Powers of 10% or 20% of a Group, Class or District of Participants. *E.g.*, Section 407(a)(3).

Throughout the Act, 10% or 20% of a group, class or district of participants may require things such as a special meeting of participants to be called or to petition for removal of a director. Does this work? For example, if there are only one or two participants in a group, class or district, should one of them be entitled to take these actions?

Is there any reason why the percentage should be different for different purposes? There can be a trap in dealing with different percentages if there is no legitimate reason for the difference.

2. Director Qualifications and Elections. Sections 703 and 704.

An observer has suggested that the Committee should discuss the advisability of being more explicit (perhaps by using separate Sections) about how directors are to be elected if the cooperative has both patron and investor participants. Questions raised are:

a. In general, should the Act go into more detail regarding the process for electing directors?
b. Should there be classifications of directors? The draft contemplates this can be provided by the articles of organization in Section 704(b). Is that clear?
c. Are Sections 703 and 704 in general understandable?
d. Are the election procedures for non-participant directors [Section 704(f)] clear or does more detail need to be provided?
e. Staggered terms of directors?

3. Removal of Directors. Section 707.

a. This draft provides directors may only be removed for cause unless the organic rules provide otherwise. Is that correct?
b. Should "cause" be defined in the act? It currently is not.
c. This draft provides for 10% of the participants to petition for removal of a director and then the Board may remove the director by a majority vote subject to the director who is removed having the right to appeal the removal to a membership meeting where he or she can be reinstated only by the same quantum of vote that was necessary to elect him or her. Is this the procedure the Committee intends?
d. An observer has raised two questions suggesting this Section and Section 708 need more thought: (1) May the patron participants petition the Board for removal of a director elected by nonpatrons, and vice versa? (ii) If a majority of the Board represents patron participants, should those directors have the authority to remove a nonpatron participant director? These questions may be especially relevant if removal without cause is permitted by the organic rules.

4. Allocation of Profits and Losses. Section 904.

A question has been raised as to whether the Act permits melding of different kinds of patron participants for purposes of allocating profits and losses. For example, there are grocery cooperatives where the members are the workers and the customers.

5. Statements of Dissolution and Termination. Sections 1114 and 1115.

These Statements are both voluntary. Neither has a purpose other than public notification. Should they be given some legal effect other than public notice? If so, (a) should either of them be made mandatory, and (b) if mandatory, what should be the legal result or penalty if they are not delivered for filing?

6. Actions by Participants. Article 12.

Parts of this Article have been discussed by the Committee but it has not received a recent complete reading. For this reason, the Committee may wish to look at the entire Article which covers direct and derivative actions by participants.

7. Approval of Amendments to Organic Rules. Section 1406.

This Section sets forth several actions that require a higher vote quantum no matter whether the amendments are to the bylaws or the articles of organization. Changing of district boundaries is not included in those provisions as drafted. This needs to be considered because the evils of gerrymandering in this context are equal to those in other contexts.

Experience of the Reporters indicates a two-thirds vote is very difficult to achieve. Does it set a quantum of vote that is so high it prevents constructive actions from being taken? Need to look at Minnesota.

8. Transfer of Title under Marketing Contracts. Section 602(a).

The Committee has not vetted the particular language of Section 602(a).

The topics covered in Section 602 are common to all agricultural cooperative statutes but the language is novel based upon discussion at the February 2006 Committee meeting. Cooperatives need to clearly ascertain whether the marketing contract is a "buy-sell" or "agency" contract not only as a matter of state law but also because of issues raised by current federal income taxation litigation regarding the taxation of cooperatives. The tax issues become more complex if a cooperative under this draft is taxed as a partnership. Moreover, there is at least one financial accounting issue which turns on the type of contract.

Many of the current statutes stress "title" which in other contexts has been ceded to UCC law so, at least arguably, language in the older statutes may be anachronistic though Committee discussion observed the importance of "insurable title" to the cooperative.

If the act authorizes contracts for purposes other than marketing, additional provisions or a separate section dealing with the other types of contracts may be required. [Why, maybe just soften the language. No, the direction in which title to goods requires specific different attention under marketing versus purchasing contracts. I ran into this when I started to redraft the Articles. I decided to quit trying pending a decision by the Committee on what contract types should be covered.]

9. Abandonment of Disposition of Assets. Article 16.

Article 16 on disposition of assets does not provide for abandonment of a plan to dispose of assets as does Article 15 on conversions, mergers and consolidations. Should it?

10. Right of Committee Member to Information. See Section 721.

Section 721 provides a "right" to directors to obtain information needed to perform as a director. Should this right be extended to members of a committee under Section 717 if limited to information needed to perform as a committee member?

C. LOW PRIORITY

1. E-mail Addresses for the Secretary of State. Section 117 (and other places):

Questions were raised at the 2005 annual meeting and by the Style Committee as to whether e-mail addresses should be provided in the Secretary of State filings to facilitate notices by electronic mail even if a State does not permit electronic filing. Should this draft provide for e-mail addresses? Should a definition of "address" be considered that would include physical, mailing and e-mail addresses, or some of them? The Reporters believe the Act as currently drafted enables e-mail addresses.

2. Certificate of Good Standing. Section 206.

At the Committee's direction the name of the "certificate of existence" in the prior draft has been changed to "certificate of good standing"; and, Subsections (a)(1) through (a)(8) and (b)(1) through (b)(6) have been deleted. The prior draft tracked the current ULLA Revision Draft and ULPA (2001) and, to a lesser extent, ULLCA (1995) and the RMBCA. Thus, as drafted, this Act is inconsistent with other recent conference enactments. Section 201 of Re-ULLCA is included as Addendum A.

Is this a place for a legislative note? At least one junction box statute confines (c) to the facts stated in the certificate. The Committee adopted this change "subject to future revision". Finally, the Reporters, on their own motion, replaced "request" with "application".

3. Special Relationships of a Participant to the Cooperative Association. Sections 114 and 115.

Should these Sections be relocated to Articles 4 or 9 where other provisions related to the participants are located?

In Section 114, the Committee on Style suggests deletion of the "subject to" language as unnecessary. The Reporters moved the language from the end to the beginning of the Section believing it was necessary if the cooperative association wanted to interrelate provisions in the organic rules or in contracts themselves with what would usually be separate contractual relationships between a participant and the cooperative association. The do think the language was previously misplaced.

4. Annual Reports – Failure to File. Subsections 207(f) and (g).

These subsections provide the consequences for failure to file an annual report. Would these subsections be better placed in Sections 1111 and 1306 respectively that deal with administrative dissolution or loss of registration to conduct activities in the state?

5. Filing Fees. Section 208.

The Reporters believe this entire Section should be in brackets because of myriad of filing fee provisions around the country. In addition to the bracketed statutes referenced there are also limited partnership acts, non-profit corporate and other acts. Some states deal with filing fees independently of their entity statutes.

6. Becoming a Participant. Section 402.

The Reporters were directed either to delete "with the consent of all remaining members" or to add thereto "if the organic rules are silent". Upon further review the Reporters have done neither pending further direction of the Committee because: (1) this act requires the admission of participants to be in a record and "if silence" raises both circularity issues and sleeping theoretical issues and (2) all the participants almost certainly have the right to amend the organic rules to admit anyone they want. This approach is consistent with unincorporated law and vests ultimate authority in the participants which seems inherently consistent with cooperative principles. Is there unless otherwise provided language?

7. Notice of Participants' Meetings. Section 408.

This section is mandatory except (b). Is this correct? The "unless provided by this [act] has been removed.

A question was raised at the 2005 Annual Meeting about the "description" language. The Committee needs to decide whether (or not) to leave it in.

The Committee has discussed the bracketed 15 day notice and the long-end has been added for discussion purposes. It is tentative.

8. Voting Power. See, *e.g.*, Section 410 and elsewhere.

Is "voting power" a confusing term?

9. Charging Orders. Section 505.

The Reporters have substantially rewritten the provisions relating to charging orders (1) in response to comments from the Committee and (2) in view of the final provisions in ULLCA. Because there has been substantive discussion regarding charging orders by the Committee, it may wish to review what the Reporters have produced.

10. Foreign Cooperatives. Article 13.

The Reporters considered modifying Article 13 in two significant respects.

Throughout the Article, the Reporters considered changing "transacting business" to "conducting activities" to reflect the terminology used with respect to nonprofit entities rather than for profit entities. They did not do so but suggest the Committee consider the terminology.

They also considered adding "unless the foreign cooperative conducts the activities on a regular and repeated basis" or confining them to "isolated transactions" in the listing of some of the activities not constituting "transacting business" in Section 1303(7) & (8). They request the Committee to consider these possible additions.

Three questions remain: (1) Should this Article be available for foreign cooperatives organized under a "traditional" cooperative statute for those states that do not have a cooperative statute under which a foreign cooperative could be registered leaving one to register under the for profit corporation or nonprofit corporation acts?

(2) Can the change of terminology in the Act from "member" to "participant" cause confusion about how the Act would be applied when other states use the word "member"?

(3) The Committee on Style suggested the words "of a like manner" in Section 1303(9) are surplusage. That is probably correct.

10. Conversion, Merger and Consolidation. Article 15.

After the Committee discussion of this Article, perhaps it may want to direct the Reporters to draft the "META" legislative note for review at the next Committee meeting.

ITEMS THE REPORTERS HAVE ADDRESSED; THE COMMITTEE MAY BE ABLE TO SAY SIMPLY "AYE" OR "NAY" TO WHAT THEY HAVE DONE

1. Number of Non-participant Directors. Section 703(e).

Prior drafts limited the number of non-participant directors. The current draft would permit this to be altered by the Organic Rules.

2. Distribution of Assets in Winding Up. Section 1007.

The Committee tentatively decided to delete the phrase "unless otherwise provided by the organic rules" in subsection (b) that instructs that distributions to participants will be based on their financial interests. This decision is inconsistent with most cooperative acts, the new cooperative association acts, and some other NCCUSL products. Despite the Committee's tentative decision, the Reporters did *not* remove the phrase believing the varieties of financing arrangements that could be created under the Act may require specialized treatment on an association by association basis when assets are distributed in dissolution. Moreover, such allocations may be practically necessary in the realm of Federal partnership taxation to utilize special allocations (*e.g.,* substantial economic effect).

3. Proxies and Electronic Participation in Meetings. Section 415(a)(1).

Proxy voting is prohibited. The Committee had only tentatively made this decision. The Committee expressly assumed the availability of electronic voting when deciding that proxy voting is prohibited although there was not explicit direction to the Reporters to include electronic voting in the draft. The Reporters did so by inserting subsection 415(c) to the 2006 Annual Meeting Draft) and moving it to Sections 406(c) and 407(d) for the December 2006 Committee Draft.

The default rule is no electronic participation in a meeting.

Proxy voting was raised directly on the floor of the 2005 Annual Meeting where: (a) a strong opinion was expressed that no proxies be allowed for patron participants but the same Commissioner was ambivalent as to investor participants; and (b) the issue was obfuscated by the question of whether an agent exercising the vote of an entity was a "proxy". The Reporters agreed to look at the question and informally report to the Drafting Committee in 2006. They believe the language as drafted (including electronic participation at meetings if provided in the organic rules) is the appropriate approach under this Act.

4. Approval and Abandonment of Merger. Section 1509.

The current draft does not provide for the possibility of a lower quantum of participant votes to approve a merger than to approve an amendment of the organic rules except for the items listed in Section 1406. With respect to those items, a cooperative could avoid the higher requirements for amendments by creating a separate cooperative with the provisions that were desired and use the lower voting requirements for a merger to avoid the higher voting requirements for amendments

regarding the items listed in Section 1406.

5. Approval and Abandonment of Merger. Section 1509.

This draft does not permit voting by districts, classes or other groups with respect to a merger although this is provided for other actions.

6. Mail. Section 119.

The Committee on Style suggested that "mail" in subsections 119(c) and 119(d)(3) was ambiguous and should be placed by "with the United States Postal Service." The Reporters made the change in 119(d)(3) but not in 119(c). In Section 415, this Committee expressly changed "USPS" to "mail."

7. Delayed Effective Date. Section 203.

The Committee on Style suggested that "a delayed" be deleted wherever it appears and that the flush language of (c) include the phrase "later than the date of filing." The Reporters did ***not*** make the change because to follow the suggestion would be inconsistent with ULCAA II. The Reporters did commit to raise this with the Committee at the December 2006 meeting.

8. Articles of Organization. Section 302.

The Reporters have removed the requirement that requirements regarding directors be in the Articles of Organization. The requirement remains for the Bylaws in Section 304(a)(5).

The Committee on Style suggested deletion of "for filing" in subsection (a). It has been retained because of a need to direct the Secretary of State as to what to do with the delivered document.

The Style Committee also suggested deletion of "initial" in subsection (a)(3). It was left in to avoid any implication that, despite other provisions in the Act, any change in the designated office would require an amendment to the articles of organization.

9. Initial Directors. Section 303

The Reporters have added additional information regarding initial directors to avoid the practical problem that arises if initial directors are not named in the articles of organization.

10. Non-participants with Contracts with the Cooperative.

Non-member patrons are a species of third-party contracts whose contract rights may be delineated (at least to some degree) by the organic rules. Does there need to be something addressing this species of users of the cooperative association in the organic rules? The Reporters have not thought so. The Delaware LLC Act language may be instructive and is included as Addendum B.

11. Security Interest and Set-off. Section 504.

The 2006 Annual Meeting Draft reflects the general direction and intent of the Drafting Committee but the Committee has not yet vetted the language.

12. Grounds for Suspension of a Director by the Board. Section 708(a).

An observer has requested the Committee consider adding a new subsection (a)(4) to provide conviction of a felony as grounds for suspension of a director by the Board. At least one Commissioner, however, has expressed strong reservation due to the possible drag-net effect of adding "felony." The Reporters instead have added "or reckless" to "intentional infliction of harm to the association" in (a)(3) believing the two adjectives would probably pick up a felony conviction if it would harm the association directly or by bringing disdain on the association.

13. Appeal of a Denial of Reinstatement by the Secretary of State. Section 1113.

The Section provides for a 30 day period within which a cooperative association must petition a court to set aside a dissolution after a denial of reinstatement by the Secretary of State. The Committee on Style questioned whether 30 days was a long enough period. The Reporters left the 30 day period because it is consistent with both ULLCA and the RMBCA.

14. Effect of Conversion. Section 1506.

Questions have been raised about the wording of subsection (a) that provided an entity was "for all purposes the same entity that existed before the conversion." The Reporters retained the language but added "and is not a new entity" following that phrase as "belt and suspenders" clarification.

15. Abandonment of Merger. Section 1509(c).

Prior drafts provided that an abandonment of a merger could be approved at any time before the filing date of the articles of merger. The Reporters changed this to the effective date.

16. Statement of Interest. Section 405.

Upon reflection, the Reporters suggest the Committee may wish to revisit whether a participant should be able to obtain a "Statement of Interest." The Minnesota Cooperative Associations Act mandates that each "member" is entitled to such a statement. [This draft does not mandate much of the information mandated by the Minnesota statute. Of course, the flexibility of the act would allow the organic rules to provide for such statement.

ADDENDUM A

Re-ULLCA

SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY; CERTIFICATE OF ORGANIZATION.

(a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the [Secretary of State] for filing a certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Section 108;

(2) the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process of the company; and

(3) if the company will have no members when the [Secretary of State] files the certificate, a statement to that effect.

(c) Subject to Section 112(c), a certificate of organization may also contain statements as to matters other than those required by subsection (a). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3):

(1) a limited liability company is formed when the [Secretary of State] has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to Section 205(c);

(2) if the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the [Secretary of State] for filing and the [Secretary of State] files the certificate; and

(3) subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

(e) If a filed certificate of organization contains a statement as provided in subsection (b)(3):

(1) the certificate lapses and is void unless, within [90] days from the date the

[Secretary of State] files the certificate, an organizer signs and delivers to the [Secretary of State] for filing a notice stating:

(i) that the limited liability company has at least one member; and

(ii) the date on which a person or persons became the company's initial member or members;

(2) if an organizer complies with subsection (e)(1), a limited liability company is deemed as of the date of initial membership stated in the notice delivered pursuant to subsection (e)(1); and

(3) except in a proceeding by this state to dissolve a limited liability company, the filing of the notice by the [Secretary of State] is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

ADDENDUM B

DELAWARE LLC ACT

(7) "Limited liability company agreement" means any agreement (whether referred to as a limited liability company agreement, operating agreement or otherwise), written or oral, of the member or members as to the affairs of a limited liability company and the conduct of its business.

[1] A member or manager of a limited liability company or an assignee of a limited liability company interest is bound by the limited liability company agreement whether or not the member or manager or assignee executes the limited liability company agreement.

[2] A limited liability company is not required to execute its limited liability company agreement. A limited liability company is bound by its limited liability company agreement whether or not the limited liability company executes the limited liability company agreement.

[3] A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement to the extent set forth therein.

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ADDENDUM C

MEMORANDUM

September 1, 2006/Distributed on or about Nov. 1, 2006

TO: Drafting Committee, Uniform Cooperative Association Act
FROM: Tom Geu and Jim Dean

SUBJECT: Types of Cooperatives

The Committee will need to address whether any types of cooperatives should be excluded from the Uniform Cooperative Association Act. In connection with this, and also to reflect on the provisions of the Act that might be extended to all cooperatives, the Reporters offer this listing of the types of cooperatives of which they are aware. Some of these cooperatives are in highly regulated industries. Some state laws authorizing the creation of certain cooperatives have express provisions for particular types of cooperatives that are not generally found in a broad cooperative statute. No effort has been made by the Reporters to examine these types of express provisions.

As the Committee considers whether to include or exclude various kinds of cooperatives from the Act, it should also consider whether any special provisions are needed in the Act for special kinds of cooperatives as provision is made for marketing contracts in Article 6. Although Article 6 is not limited to agricultural cooperatives, its genesis was taken from agricultural cooperative statutes.

The following list is not exhaustive, but will hopefully show the array of cooperative types currently in existence and show the complexity involved in considering a cooperative-type statute that might be used by any of them.

Marketing Cooperatives – These cooperatives can be formed to market any type of goods or commodities although the Committee has focused largely on agricultural marketing cooperatives

Advertising Cooperatives – These cooperatives involve purveyors of goods or services in joining together in advertising their wares while making sales individually. The advertising can range from media advertising to cooperatively published catalogues.

Bargaining Cooperatives – These cooperatives are principally found in agriculture where they represent their members in bargaining with a processor for contract terms and sales of the commodities produced by their members.

Processing Cooperatives – These cooperatives process goods and commodities of their members

for sale to others.

Purchasing Cooperatives – Sometimes also referred to as "supply cooperatives," these cooperatives purchase goods for resale to their members.

Consumer Purchasing Cooperatives – These purchasing cooperatives' members are the direct consumers or users of the items purchased by the cooperative. A new application of this type of cooperative is developing in the medical field where consumers of medical services band together in a cooperative to acquire goods and services from various providers of the medical services and supplies. The most commonly known of these cooperatives are grocery stores operated cooperatively for their members. [There are also worker owned cooperative grocery stores.]

Wholesale Buying Cooperatives – These purchasing cooperatives' members are retail sellers who acquire the goods they resell through a wholesale buying cooperatives.
Examples
Ace Hardware with 4,600 member stores.
Carpet One with 1,000 independent floor covering member retailers
National Cable Television Cooperative with 1,100 independent cable operators.
Educational & Institutional Cooperative Service, Inc. with 1,500 members that are tax-exempt colleges, universities, prep schools, hospitals, medical institutions.
VHA, Inc. with 2,400 members that are community hospitals and other health care organizations.
NCBA estimates 300 purchasing cooperatives exist nationwide serving 50,000 small business members.

Service Cooperatives – These cooperatives provide services to their members. An example is a cooperative that provides linen and laundry services to hospitals and other medical care facilities in a city.

Worker Owned Cooperatives – These cooperatives consist of employees/workers who band together to own and operate their own company to provide themselves with jobs and occupations.

Section 1042 of the Internal Revenue Code 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).

Housing Cooperatives – These cooperatives own multifamily buildings (or on occasion free standing units within a complex) with common elements owned by the cooperative. Membership in the cooperative is acquired when a cooperative unit is acquired.

This concept is also utilized in connection with office buildings.

Real Estate Cooperatives – With these cooperatives, the land is owned by the cooperative and the right to occupy and construct or own a building on a portion of the land comes with the membership interest in the cooperative.

Mutual Insurance Companies

Credit Unions

Utility Cooperatives – Rural Electric Associations
Rural Telephone Companies

Mutual Ditch Companies

Mutual Cemetery Companies

Investment Cooperatives

Financial Planning Cooperatives