

To: Agricultural and Agricultural Related Cooperative Act Drafting Committee,  
Uniform Laws Commission; Advisors and Observers

From: Tom Geu, Reporter

Date: March 27, 2005

Re: Overview of April 2005 Draft

### I. Suggested Discussion for April Meeting

It seems to me there are three parameters for deciding how to use the April meeting: (1) preparation of the provisions projected to be discussed at the 2005 Annual Meeting this summer; (2) necessity for the Committee to discuss articles that it has not yet discussed; (3) emphasis on “centers of gravity” (articles or individual sections).

Articles 1 through 4 and 6 were read at the 2004 Annual Meeting. I assume leadership, therefore, would want to get through as much of the balance of the draft this summer (for the first time).

Applying the above parameters, and subject to the Chair’s absolute discretion, expertise, and wisdom, it seems one reasonable approach would be as follows (in “whatever” order):

(1) revisit Article 6 (Directors and Officers) sections 601 through 617;

(2) discuss the issues raised in the memo on “fiduciary duties” (sections 618 *et seq.*) and “indemnification” (Article 7); and, dependant of the outcome of that discussion attempt a line-by-line reading of those provisions;

(3) continue through the end of the Draft which would include covering the following “centers of gravity” (in addition to Article 6):

(a) Article 8: Contributions, Allocations and Distributions

(b) Article 9: Dissociation

(c) Article 13: Authority to Amend Organic Rules

(d) Article 16: Dissenters Rights (perhaps not a center of gravity but certainly a lightening rod);

(4) selected revised sections in Articles 1 and 2 (which can be identified in the redline) including name of act, “agricultural”, and deletion of “plan”.

## II. Detailed Description of the Status of the Draft

This draft revises Articles 8-14 (the draft *language* of Articles 10, 11, 12 and 14 have not been discussed by the Committee); and, Articles 16 and 17 (16 is new and has been discussed in concept only; several sections from elsewhere have been redrafted and placed in 17 for discussion purposes).

It also revises most of Article 6 and Articles 8 and 9, all of which have been discussed. The last sections of Article 6 (roughly “fiduciary duty”) and Article 7 (“indemnification”) have been discussed by the Committee and are the subject of a separate memo for Committee discussion.

Selected sections in Articles 1 and 2 have been revised. Articles 3 and 4 are ready for revision but have not yet been revised to reflect discussion. Article 5 has been discussed at length but no drafting suggestions have been made and one section has been revised and, for now, has been moved to Article 17 for discussion purposes.

In sum, Articles 6-14, 16-17, and selected revisions of Articles 1-2 are ripe for discussion.

## III. Reporter’s Observations

### (1) Length of Draft:

(a) The draft contains ever expanding Reporter’s Notes (it’s not *all* text).

(b) There is a real tension between run-of-the-mill unincorporated statutes whose philosophy (for statutory and historical reasons) is that “you can do anything that isn’t prohibited”; and, the more corporate model whose philosophy is, “it is prohibited unless there is statutory permission.”

(c) Length may raise a policy issue because of the possible negative implication that the act should be interpreted “looking for permission” rather than “for prohibition”. It also puts tremendous pressure on the “waivable/nonwaivable” provision.

(d) Unincorporated organizational laws are getting more detailed led by the Delaware and Minnesota LLC Acts and (to some extent) reflected in ULPA (2001) (“opinion givers want a cite” might be a reason).

(2) Somewhat related to (1)(d), I’m looking for volunteers to help me review, edit, and serve as another memory bank for individual articles. All comers welcome, pick any article that suits your fancy.