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

From: Tom Geu, Reporter

Date: June 14, 2005

Re: Suggested Discussion Agenda and Explanation of the 2005 Annual Meeting Draft

I. Definitional & Scope Issue

The Conference spent a significant amount of time discussing the definition and intent of the phrase "agricultural and agricultural related" at the 2004 Annual Meeting in Portland. The Drafting Committee returned to this issue in both its Fall 2004 and Spring 2005 drafting meetings and discussed the meaning of those terms as used in the 2004 Annual Meeting Draft as well as alternative formulations.

The 2005 Annual Meeting Draft intentionally contains no definition for the phrase leaving the definition for other law in the states. *See* Article 1, Reporter's Note. The conundrum, of course, is that the definition is to be broadly construed and the attempts at a definition quickly become both over- and under-inclusive to the point of becoming affirmatively "unhelpful". This matter has been the subject of further formal discussion since the Drafting Committee's April 17, 2005, meeting and an update on the matter will be given at the 2005 Annual Meeting. Subject to continued discussion prior to the Annual Meeting, however, the Committee seems satisfied that leaving "agricultural and agricultural related" to be defined by other law is the most appropriate course.

II. Articles 1 Through 6

Most of the time available to the Drafting Committee during the past year has been devoted to Articles 6 *et seq.* Nonetheless, the 2005 Annual Meeting Draft reflects some, but by no means all, of the discussion and debate on the first six articles of the act which occurred at the 2004 Annual Meeting. The Reporter continues to integrate the discussion into the draft and it is anticipated the Drafting Committee will return to the first *five* articles at its Fall 2005 meeting. Several issues from the first six articles, including definitional issues, are noted in the Reporter's Notes in related sections appearing in Articles 7 through 17. Only Articles 6 through 17 have gone through the Committee on Style for this meeting.

III. Articles 7 Through 17; Suggested Reading Schedule 2005 Annual Meeting

The Conference (as a Committee of the Whole) has not yet had the opportunity to review the draft language or concepts contained in Articles 7 through 17. Thus, consistent with

conversations with Chair Peter Langrock, it is suggested the Conference focus on these articles at the 2005 Annual Meeting. Article 6 was discussed, but quickly, at the last annual meeting. Therefore it is suggested that Articles 6 through 17 (the end) be read at the 2005 meeting. Please note that Article 15 ("Sale of Substantially All Assets") is reserved pending discussion of Article 14 ("Consolidation and Mergers").

Once the "basic" merger provision has been vetted by the Conference a conforming Article 15 will be discussed by the Drafting Committee. Relatedly the Drafting Committee has tentatively concluded that this product should dovetail with META and the language and legislative note will be prepared for Drafting Committee discussion after the current review of Article 14.

The Reporter's Notes provide explanation and, in some instances, suggest specific questions the Conference might desire to consider.

IV. General Observations About The 2005 Annual Meeting Draft
And An Aside By The Reporter

Directly concerning the task at hand: (1) The phrase "unless otherwise provided" continues to be repeated frequently in this Draft. It is still the intention of this Committee to centralize, in one section, the mandatory rules (much as is done in the Conferences other unincorporated acts); (2) Articles 1 and 2 (most notably 2) will be reorganized and, perhaps, divided into two articles; (3) as with other projects, it is expected that the definitions will continue to evolve throughout the life of the project; and, (4) the Drafting Committee level discussions continue to evidence the uniqueness of the cooperative form of organization; *i.e.,* even though the Notes reference corporations and unincorporated entities the cooperative is *sui generis* with strong law and value traditions that defy the uncorporated and unincorporated taxonomy. Stated yet another way, cooperatives are not "hybrid" entities; they are cooperatives.

Finally, a general personal request from the Reporter for informal feedback to the Reporter that goes beyond this act. It should be considered as a general request for thoughts by the Reporter, personally. An issue is emerging in academia regarding the transmission of non-economic "values" by law. Cooperatives are a good example of how the issue is raised. There is a strong *tradition* in cooperatives that is not directly reflected in any modern cooperative law. Statutes contain technical requirements only and terrible (and unworkable) uncertainty is injected with any attempt to integrate these traditional "values". (*E.g.,* listed in, for example, a "factor" list). Such "values" may be dangerous even in Comments.

In co-ops, again by way of example only, these values are most analogous to the "mission" (as opposed to legal purpose) of the organization. There is flexibility in this tradition even outside the law even though there is an amorphous "core" of values (sometimes mutually exclusive) that is sometimes stated in general materials. The issue could be stated as the "aspirational" function of law; reportedly, now labeled "soft" law in Europe.

Importantly, this draft strives for uniformity and, therefore, this is not an issue that must be resolved for this act (and, probably, shouldn't be attempted in the context of this project as nobody else has figured it out either). Nonetheless, it is a practical drafting issue that goes beyond theory. The Reporter requests the favor of thoughts any individual Commissioner might have on the issue and requests they be given him informally. The Reporter thanks the Conference for this digression from the real substantive work at hand.