Disclaimer

This information is being provided for educational purposes only. Neither the information presented, nor the attorney presenters shall be deemed to be or be giving legal advice.
Agenda

1. Introduction
2. Cooperative Definition
3. Cooperative Statutes in Colorado
4. Capital
5. Questions
Introduction

- Jason Wiener p.c., a public benefit corporation
  - Boutique business law, shared ownership, creative financing and securities, cooperatives, employee ownership, cooperative development and business consultancy
  - Industries: technology, agriculture and small producers, transportation, energy, telecom, service, retail, food and beverage
Cooperative Definition

“A cooperative is an organization established by individuals to provide themselves with goods and services or to produce and dispose of the products of their labor. The means of production and distribution are those owned in common and the earnings revert to the members, not on the basis of their investment in the enterprise but in proportion to their patronage or personal participation in it.”

Colorado, the Delaware of Cooperative Law™

- Title 7, Article 55 – historically conventional cooperative industries (housing, electric)
- Title 7, Article 56 – Cooperative Corporation
- Title 7, Article 58 – Limited Cooperative Association (LCA)
- Title 38, Article 33.5 – Housing Cooperative Statute
- Section 40-2-127 – Community solar garden can be owned by co-op
- Title 11, Article 30 - Credit Unions
Cooperative Definition contd.

- One-member, one-vote
- Business carried on for the mutual benefit of the members
- Stock vs membership cooperatives
- Profits distributed to the members based on *patronage*, not equity
- Operated at cost; NOT a non-profit entity
- Limited transfer of ownership interests
- Voting rights to patron members and/or investor members, depending on type of cooperative
- Limited liability for members
- Membership stock exempt from securities registration
Types of Cooperative Capital

- Member Capital Contribution – share purchase
- Membership Fee (non-refundable rev)
- Member Dues
- Member Loans
- Non-voting common stock / additional capital contributions
- Investor Convertible Debt / SAFE

Preferred Equity
- (Re) Target dividend
- (Re) Accruing dividend
- (Self) Demand dividend
- (Self) Capped Revenue/profit share

SBA 7(a) and Bank debt
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Member Capital Formation

- Membership Share Purchase (equity)
- Membership Fee (non-refundable, revenue)
- Membership Dues
- Non-voting common stock
- Additional Capital
- Contribution
  - Per Unit Retain
  - Non-qualified written notice of allocation
  - Retained equity
  - Member Loans
Convertible Debt / SAFE / CAFE

- Convertible debt: debt instrument that converts to preferred equity upon one or more triggering events

- SAFE: “Simple Agreement for Future Equity”

- CAFÉ: “Continuous Agreement for Future Equity”

- Bespoke conversion triggers, minimum preferred equity terms
Preferred Equity

**Repurchaseable Dividend Shares**
- Target Dividend (e.g. 3-7%, not guaranteed)
- Accruing Dividend (e.g. 3-8%, guaranteed and cumulative, even if not paid)
- Dividend Steps (X% div if profit below Y, and Z% div if profit above Y)

**Self-Redeeming Dividend Shares**
- Demand Dividend or Capped Return
- Holiday – accruing div from FCF – distributions from FCF
Bank Lending

• SBA 7(a) and 504 Loans available to cooperatives
• Personal guarantee required*
• Shared Capital and certain other CDFI’s can guarantee a cooperative’s bank loan for a fee
• Cooperatives can mortgage real property
• Cooperatives can issue secured or unsecured notes like any other business
• CO Revolving Loan Fund!

• *Personal guarantee requirement challenging in light of 20% ownership threshold and equitable ownership
Questions?

Thank you!

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