

CoopZone Legal Network
Offering Statements 101

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How do Co-ops find the capital they need?

- Conventional sources
 - Family & friends
 - Financial institutions
 - Grants
 - Angel investors
 - Venture capital
 - IPO
- Co-ops look to the communities they serve
 - Member investment generates loyalty



WindShare Financing

- Early grants from Trillium Foundation
- Partnership with Toronto Hydro: TREC did the work, TH paid invoice for 50% @ fair market value
- Environment Canada – forgivable loan
- Toronto Atmospheric Fund – bridge financing pending proceeds of offering
- Offering to members - ~\$800K




SolarShare Co-op

- Owns and operates 19 solar installations
- Have FITs from Green Energy Act
- Raised \$3.7 million in bridge financing
- Now selling Solar Bonds to pay out bridge: \$1.311M raised to date
- Non-profit: Bonds carry fixed return, surplus to TREC to be used for more development and to guarantee payments to bondholders



Power to the people: almost 600,000 watts last Thursday

SolarShare  **SolarVu**
SMART - ENTERPRISE
System Management And Reporting Tool
HOME | SETUP | LOGOUT

Performance **Report** Mar 14, 2013, Thu 12:07 PM (GMT -5:00)

GROUP Active PROFILE Power Now PERIOD Today Help

| | Status Alarm Comm | Name | Sell Power Now | Output Now % Capacity | Sell Size | Sell Revenue | Sell Energy | Sell Lifetime | Run Time |
|--------------|----------------------|------------------|-------------------|--------------------------|---------------|-----------------|------------------|------------------|-----------|
| Total | | 19 | 545 kW | | 590 kW | \$ 1,063 | 1,497 kWh | 1,211 MWh | |
| 1 | ● ● | SunField - Cur1 | 10,220 W | 102.2 % | 10.0 kW | \$ 23.28 | 29.0 kWh | 31,941 kWh | 1.8 Years |
| 2 | ● ● | SunField - Tol-O | 10,219 W | 102.2 % | 10.0 kW | \$ 28.33 | 35.3 kWh | 33,619 kWh | 1.8 Years |
| 3 | ● ● | SunField - Lebl | 10,219 W | 102.2 % | 10.0 kW | \$ 28.33 | 35.4 kWh | 30,430 kWh | 1.8 Years |
| 4 | ● ● | SunField - Lev | 10,218 W | 102.2 % | 10.0 kW | \$ 25.01 | 31.2 kWh | 32,289 kWh | 1.7 Years |
| 5 | ● ● | SunField - Tol-C | 10,218 W | 102.2 % | 10.0 kW | \$ 29.35 | 36.6 kWh | 34,416 kWh | 1.8 Years |
| 6 | ● ● | SunField - Fln | 10,217 W | 102.2 % | 10.0 kW | \$ 29.81 | 37.2 kWh | 32,847 kWh | 1.7 Years |
| 7 | ● ● | SunField - Krtz | 10,216 W | 102.2 % | 10.0 kW | \$ 29.79 | 37.1 kWh | 33,393 kWh | 1.8 Years |
| 8 | ● ● | SunField - Bry | 10,216 W | 102.2 % | 10.0 kW | \$ 27.27 | 34.0 kWh | 39,117 kWh | 2.0 Years |
| 9 | ● ● | SunField - Rous | 10,216 W | 102.2 % | 10.0 kW | \$ 28.15 | 35.1 kWh | 33,284 kWh | 1.8 Years |
| 10 | ● ● | SunField - Bak2 | 10,215 W | 102.2 % | 10.0 kW | \$ 24.29 | 30.3 kWh | 30,960 kWh | 1.7 Years |
| 11 | ● ● | SunField - Bak1 | 10,215 W | 102.2 % | 10.0 kW | \$ 25.83 | 32.2 kWh | 32,253 kWh | 1.7 Years |
| 12 | ● ● | SunField - Mslmn | 10,214 W | 102.1 % | 10.0 kW | \$ 12.34 | 15.4 kWh | 31,412 kWh | 1.7 Years |
| 13 | ● ● | SunField - Bow | 10,213 W | 102.1 % | 10.0 kW | \$ 26.55 | 33.1 kWh | 29,536 kWh | 1.7 Years |
| 14 | ● ● | SunField - Gtz | 10,212 W | 102.1 % | 10.0 kW | \$ 27.68 | 34.5 kWh | 31,889 kWh | 1.7 Years |
| 15 | ● ● | SunField - Stev | 10,212 W | 102.1 % | 10.0 kW | \$ 28.12 | 35.1 kWh | 31,343 kWh | 1.8 Years |
| 16 | ● ● | SunField - Run | 10,210 W | 102.1 % | 10.0 kW | \$ 29.66 | 37.0 kWh | 33,998 kWh | 1.8 Years |
| 17 | ● ● | 360 Ontario | 100,602 W | 100.6 % | 100 kW | \$ 201 | 282 kWh | 24,388 kWh | 114 Days |
| 18 | ● ● | WaterView | 273,179 W | 85.4 % | 320 kW | \$ 426 | 671 kWh | 633 MWh | 1.8 Years |
| 19 | ● ● | SunField - Cur2 | 7,598 W | 76.0 % | 10.0 kW | \$ 12.53 | 15.6 kWh | 31,252 kWh | 1.8 Years |

Ontario Co-op Law

- Ontario Legislature 1971 Select Committee Report on Co-operatives
- 1973 Co-op Corporations Act that we work with today:
 1. "rights, powers and privileges of a natural person"
 2. security regulation introduced
- co-ops had been totally exempt from the usual strict requirements of the Securities Act



Exemptions

- Co-op securities may be sold without regulatory approval:
 - To the first 35 security owners
 - for the first \$200,000 capital in the co-operative (may increase to \$2 million)
 - up to \$1,000 per year per member, to a maximum of \$10,000 (may increase to \$10,000 and \$100,000, respectively)
- Exemptions can be combined – after \$200K is raised, can still raise \$1K per member per year

Co-op Offering Statements

- Where:
 1. exemptions not available, or
 2. where the marketing of co-op securities would be enhanced by a government-receipted disclosure document,
an Offering Statement is prepared and “receipted” by FSCO.
- Co-ops should use the disciplined approach an offering statement requires even if they are not required to do so



Goals for OSs

- Standard: “Full true and plain disclosure of all material facts” – same as for prospectus
- Securities regulation has two goals:
 - (a) to provide protection to investors from unfair, improper or fraudulent practices; and
 - (b) to foster fair and efficient capital markets and confidence in capital markets.
- Co-op securities regulation has only one: to protect investors

Drafting Offering Statements

- Key – good business plan
- Use of “templates”: FSCO says,
“Every Offering Statement is unique and the information contained therein is dependent on the individuality of the business enterprise.”
- Provide client with sample previously approved OS to do a first draft
- Legal review requires good knowledge of co-op’s business, attention to Risk Factors



Risk Factors

- Clearly and carefully set them out
- Prospective investors will appreciate candour
- Can actually enhance offering's success
- Not every possible risk – just the “material” ones



Issues

- Review times can be excessive
- FSCO not confident about level of skill in co-operatives to meet standard of full, true and plain disclosure of all material facts
- Led to extreme delays – for non-profit co-operatives particularly
- In last year, vast improvement in FSCO



Issues

- Exemptions and OS only available:
 - to Ontario-incorporated co-ops
 - for securities sold in Ontario
- Approval times hamper OS use (lately, improved)
- Confusion with energy co-ops – no business with members: “Why aren’t you at the OSC?”



Do They Work?

- Too lengthy, too verbose OS will not be read
- Other jurisdictions have pithier, more reader-friendly OSs – Australia, UK
- Co-op investors are more likely to care about the co-op's social goals, less about the investment risk
- The more serious the amount of money you're raising, the more the investment risk is a factor

Resources

- FSCO Tips for Offering Statements:
http://www.fSCO.gov.on.ca/en/coops/Pages/offering_stmts.aspx

