

This is the 1<sup>st</sup> affidavit of William L. Oemichen in this case  
And was made on September 25, 2020

No. S209201 Vancouver Registry

In the Supreme Court of British Columbia

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED

AND

IN THE MATTER OF MOUNTAIN EQUIPMENT CO-OPERATIVE AND 1314625  
ONTARIO LIMITED

Petitioners

**AFFIDAVIT**

I, William L. Oemichen, of New Glarus, Wisconsin USA, recognized international co-operative expert, swear/affirm that:

1. I am a Fellow at the Canadian Center for Co-operatives at the University of Saskatchewan and as such, I have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based on information and belief, in which case I verily believe the same to be true.
2. I am currently employed as a Senior Research Fellow in Preparedness and System Risk with the Jahn Research Group at the University of Wisconsin-Madison.
3. I was trained as a co-operative business and accountant malpractice attorney at two major American law firms and am admitted to practice law before the Supreme Court of Wisconsin, the Supreme Court of Minnesota, The Seventh Circuit U.S. Court of Appeals in Chicago and the Eighth Circuit Court of Appeals in St. Louis, as well as all other federal and state courts in Wisconsin and Minnesota.
4. I am seeking accreditation to practice law in Canada through the Federation of Law Societies of Canada's National Committee on Accreditation (NCA) and completed several competency exams in August of this year.
5. I am a candidate for a PhD at the Johnson-Shoyama Graduate School of Public Policy at the University of Saskatchewan and University of Regina.
6. I serve as the outside independent director on the Board of Farm Credit Council Services in Denver, Colorado, the for-profit education and information arm of the \$340 Billion American Farm Credit System and I chair the board's Audit Committee.

7. I serve on the board of AgCountry Farm Credit Services in Fargo, North Dakota, an \$8 Billion financial services/credit co-operative owned by nearly 15,000 farmers in North Dakota, Minnesota and Wisconsin and I have served as Chair of the Audit Committee and as the board's designated financial expert.
8. I am Finance Committee Chair, Audit Committee Chair, and the board-designated financial expert for the \$460 Million Group Health Cooperative of South Central Wisconsin, a health care insurer and provider owned by nearly 80,000 citizens in South Central Wisconsin.
9. I serve as Chair of the Board of Trustees of the Wisconsin College Savings Board of Trustees and oversee administration of nearly \$6 Billion (U.S.) in assets and have been appointed to that position multiple times by the Governor of the State of Wisconsin and confirmed to the position multiples times by the Wisconsin State Senate.
10. I have served as the designated financial expert and Audit Committee Chair on the board of several other co-operatives and community-owned institutions, including GreenStone Farm Credit Services in Michigan, United Farm Credit Services in Minnesota, and the Monroe Hospital and Clinics in Wisconsin.
11. I served fourteen years as President & CEO of Cooperative Network, the largest all-cooperative trade association at the state level in the United States with over 600 co-operative business members including members of the Fortune 500 that are owned by more than 6.3 million residents of Wisconsin and Minnesota. As a licensed attorney, I represented Cooperative Network in federal and state court litigation over the governance and financial rights of cooperative members.
12. I served nearly six years as Wisconsin Administrator of the Division of Trade & Consumer Protection where I led Wisconsin's principal consumer protection program. I supervised nearly 200 investigators, prosecutors and consumer specialists to respond to nearly 200,000 complaints and inquiries each year from Wisconsin consumers about business fraud and other issues. I led the State of Wisconsin's response to the financial collapse of several cooperatives which I believed was due to inadequate financial management and board governance and controls. I also served in other senior state positions in Wisconsin and Minnesota.
13. I was a successful dissenting board director candidate in a contested election for the Board of Directors of Group Health Cooperative of South Central Wisconsin in 2015. I was joined by other dissenting board candidates, one who was a Professor who taught cooperatives at the University of Wisconsin-Madison and another who was president of the National Co-op Business Association in Washington, D.C. Our campaign against the incumbent board directors was motivated by what we believed was the board and management's responsibility for an ill-advised rapid expansion and subsequent rapid deterioration in the cooperative's financial position. Our dissenting campaign was supported by other cooperative businesses and their member-owners in Dane County (Madison), Wisconsin. We defeated our three incumbent director opponents and the CEO immediately resigned. We were motivated to run by an understanding that the cooperative

was within months of being taken over by the state insurance regulators and our run for cooperative office was reported by some of the state's largest media outlets. Over the following two years, the members replaced five other incumbent board directors. The cooperative's financial position has rapidly improved under a new CEO and board, has regained the trust of state regulators, and is now rated by national independent rating agencies as one of America's top five health care providers among hundreds measured.

14. I have testified on cooperative governance and finance before the U.S. Congress and before a number of state legislatures, as well as provided guidance to the Provincial Governments of British Columbia and Alberta on co-operative governance, economic development, and financial/securities issues and regulations.
15. My expertise on cooperative governance and finance was recognized by the U.S. Comptroller General in 2010 when I was appointed by him to serve on an advisory board to the U.S. Department of Health & Human Services to determine criteria for distributing \$6 Billion (U.S.) to developing health insurance CO-OPs. I served as chair of the advisory board's co-op governance subcommittee.
16. I have provided guidance to the co-operative business associations in British Columbia and Alberta, as well as to other provincial co-operative associations, on financial, governance, taxation, and securities issues. I have also provided guidance on co-operative governance and financial issues to co-operative businesses across the world and to legislators in a number of countries, including but not limited to, the United Kingdom, Germany, Pakistan, South Africa and New Zealand.
17. I am currently working with colleagues at the Canadian Center for Co-operatives to research why co-operatives are so different from the other members of the corporate community, why American state legislators favor co-operative businesses with numerous regulatory exemptions because of the member ownership structure, and why certain co-operatives collapsed due to failures in co-operative management and governance.
18. As the former President & CEO of Cooperative Network, I am directly aware of a number of successful efforts by Midwestern USA co-operatives to raise equity directly from many thousands of members to finance co-operative modernization and expansion. For example, I have attached as an Appendix A to this affidavit a presentation I made to the board of directors of Willy Street Cooperative in Madison, Wisconsin on February 14, 2020 detailing some of the recent actions taken by co-operatives to raise equity directly from their members. This is a common practice in the United States and I believe, based on my reading of the British Columbia Co-operatives Act, and my discussion with the British Columbia Securities Commission, that there are similar opportunities for co-operatives to raise equity from members in Canada.

19. Equity raising by Wisconsin and Minnesota co-operatives for co-operative modernization and expansion is so common that the Wisconsin and Minnesota state statutes, respectively, explicitly exempt such offerings from state securities regulations based on the concept of member ownership of the co-operative and the complete absence of complaints filed by aggrieved members with state securities regulators. I have had discussions with British Columbia and Alberta securities regulations about the feasibility of similar securities exemptions for co-operatives headquartered in those two provinces.
20. I respectfully maintain that if this Honourable Court authorizes Mountain Equipment Co-op purchase by a U.S.-based investment firm through the Companies' Creditors Arrangements Act (CCAA) process without allowing the opportunity for MEC's estimated five million members to vote on the sale, this will vitiate member governance provisions of the British Columbia Cooperative Associations Act and will have negative corporate governance implications for co-operative businesses across Canada and possibly in the United States.

AFFIRMED BEFORE ME at Green )  
County, Wisconsin USA, on )  
25/Sep/2020. )

Diane H. Elmer

A Notary Public for taking Affidavits )  
for the State of Wisconsin )

Notary Commission  
expires - 1/23/21

William L. Oemichen  
William L. Oemichen

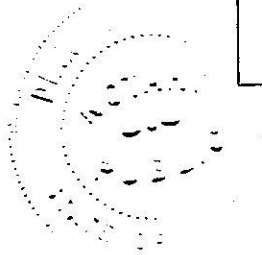


This Exhibit "A" referred to in the Affidavit No. 1 of  
William L. Oemichen  
Affirmed before me on 25/Sep/2020 at Green County,  
Wisconsin

*Diane G. Selmer*

Notary Public

My commission expires 1/23/21





# Preferred Stock and Willy Street Co-op

February 16, 2020

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# Introduction to Cooperative Securities

- This presentation is not intended to offer legal guidance to Willy Street Co-op's Board of Directors, Management or Members
- Presentation focuses on:
  - What is preferred stock?
  - The Wisconsin cooperative securities exemption
  - Uses of the exemption
    - Preferred stock
    - Debt placement certificates
- Disclosures

# What is Preferred Stock?

- Stock issued for a price
  - Public exchanges
  - Private offers
- Nonvoting
- First right to financial return
  - Priority right over members
- Limited to an 8% dividend
  - Amount is fixed
  - May vary based on stock price if traded on public exchange



# Types of Preferred Stock

- SEC-regulated
  - CHS Preferred Stock with between 7-8% dividend depending on issuance
  - Traded over NASDAQ so federally regulated by the SEC
  - Quarterly reporting costs about \$250,000 per quarter
- Non-regulated
  - “Regulated” under state securities law
    - Peoples’ Food Cooperative
    - Viroqua Food Cooperative
    - Cooperative Energy Futures
    - CROP/Organic Valley
    - Premier Cooperative

# Wisconsin Statutes Section 551.201

- **551.201 Exempt securities.** The following securities are exempt from the requirements of ss. 551.301 to 551.306 and 551.504:

- **(8)** Any securities of a cooperative corporation organized under ch. 185 or an unincorporated cooperative association organized under ch. 193.

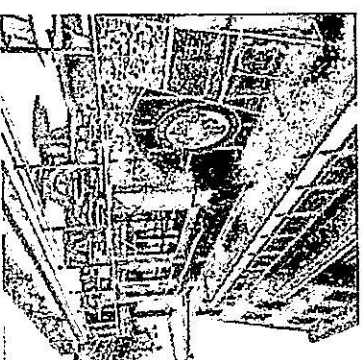
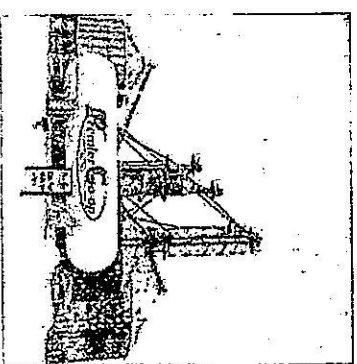
- Wisconsin Department of Financial Institutions  
<https://www.wdfi.org/fi/securities/regexemp/exemptions/Cooperative-IssuedSecurities.htm>

# Wisconsin Department of Financial Securities

- **Cooperative-Issued Securities**
- **Statute:** § 551.201(8), Wis. Stats.
- **Used for:** Any securities of a cooperative corporation organized under ch. 185 or an unincorporated cooperative association organized under Ch. 193.
- **Filing requirement:** Self-Executing. No filing or Consent to Service of Process is necessary in order to claim this exemption.
- **Frequently asked questions:**
- **Q:** Is the exemption self-executing?
  - **A:** Yes. No filing or Consent to Service of Process is required.
- **Q:** Do securities of a non-Wisconsin cooperative qualify for this exemption?
  - **A:** No. The securities of only Wisconsin cooperatives organized under ch. 185 or ch. 193 qualify.
- **Q:** Is this exemption limited to agricultural cooperatives?
  - **A:** No. The exemption does not restrict the type of activity the co-op may engage in.
- **History:** Predecessor statute 551.201(8), Wis. Stats, adopted effective January 1, 2009, which applied to "any securities of a cooperative corporation organized under the laws of any state sold to a member of the cooperative".

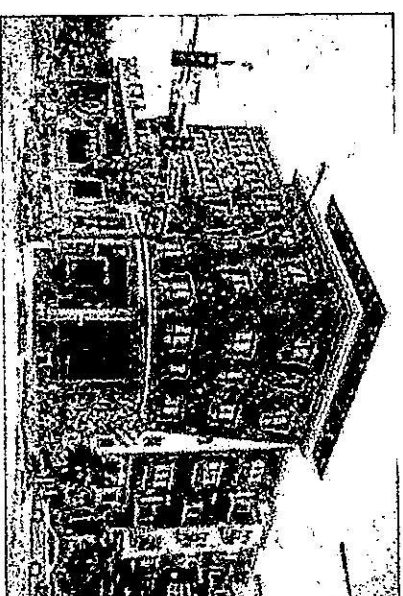
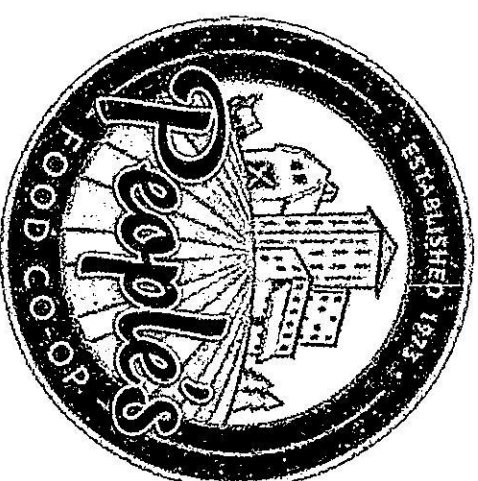
# Wisconsin Co-operative Securities Exemption

- Securities exemption is complete and applies to all co-operative types
  - 865 Wisconsin co-operatives
  - 2.9 million owners
- Preferred stock
  - No voting rights
  - Priority claim to financial distribution
  - Varying purchase requirements
  - Varying dividends paid
- No complaints on file with the Wisconsin Department of Financial Institutions



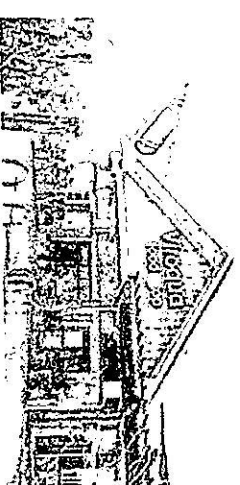
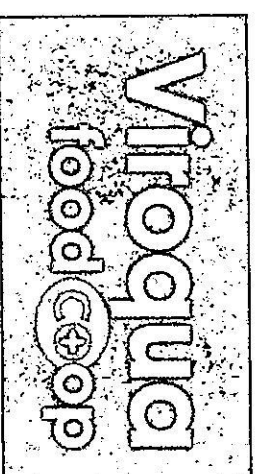
# People's Food Cooperative

- LaCrosse, WI and Rochester, MN
- More than \$3 million raised from LaCrosse members to build Rochester store



# Viroqua Food Cooperative Preferred Stock

- Solar Power Project
  - 130 solar panels on co-op's roof
  - Intended to meet 13.6% of co-op's energy needs
- Co-op's articles of incorporation authorize up to \$3,175,000 in preferred stock
  - 127,000 shares at \$25/share
  - Phase I - \$942,000 raised through March 30, 2018 of \$1 million goal
  - Phase II - \$74,000 sold of remaining \$300,000
- Class C shares are nonvoting
- 3% interest rate with minimum \$500 investment
- 4% interest rate with minimum \$10,000 investment
- Stock is redeemable at any time but requires board approval

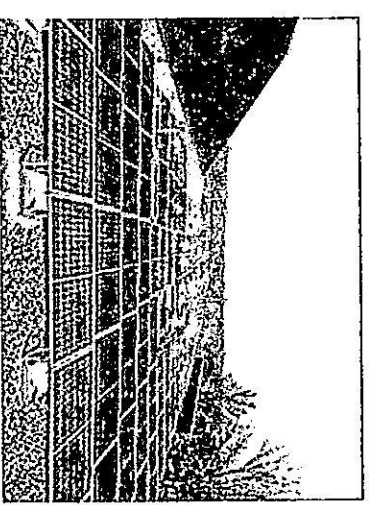


# Cooperative Energy Futures Preferred Stock

- Minnesota Renewable energy cooperative with 700+ members
  - Similar Minnesota cooperative securities exemption
- Funding intended to be used to develop solar gardens in Southern MN
- Round One: \$501K raised from members in 2017
  - Leveraged \$14.5 million in lending
  - 8 solar gardens created
- Round Two: \$750,000 to \$1 million to be raised through March 2020
  - Shares priced at \$500
  - Minimum purchase of two shares
  - 6% dividend
  - 5 year stock term with 5 year automatic renewal
  - Member can redeem at any time, but penalty applies



COOPERATIVE ENERGY FUTURES  
COMMUNITY POWERED ENERGY



# CROP Preferred Stock

- Class E stock
  - Four series
    - Series 4 offered through April 2020
      - Minimum \$5,000 purchase
      - Maximum \$500,000 purchase (12 month period)
    - Must be Organic Valley employee or member



# Premier Co-op Securities Example

- Debt Placement Offering – Unsecured Certificate of Indebtedness
  - \$15 Million Goal
  - Eligibility
    - Available to members
    - Must purchase more than \$1500 per fiscal year
    - Must reside in state of Wisconsin
  - Minimum Purchase Requirement
    - \$2,500 minimum
    - \$350,000 maximum
- Members receive 2.5% dividend annually
  - Dividend may be adjusted
  - Compounded quarterly

# Premier Cooperative Securities Disclosure

- Eight page document with disclosures
  - Finances
  - Organizational structure and operations
  - Business analysis
  - Risk factors to be considered (e.g. competition)
  - Level of government regulation
- Intended to provide investor protections

# Questions?

Bill Oemichen

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and Life Sciences

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