



NOTICE OF ADOPTION

COMMISSION LOCAL RULE COOP-001 *GENERAL* AND COOP-002 *FEES* made under the *Cooperatives Act*

AND

NOTICE OF REPEAL AND ADOPTION OF THE NEW LOCAL RULE 45-501 *PROSPECTUS AND REGISTRATION EXEMPTIONS* made under the *Securities Act*

Introduction

On 19 November 2019, the Financial and Consumer Services Commission (Commission) approved Commission Rule COOP-001 *General* (Rule COOP-001) and Rule COOP-002 *Fees* (Rule COOP-002) (collectively the Coop Rules). The Commission also approved repealing the current LR 45-501 and approved making Local Rule 45-501 *Prospectus and Registration Exemptions* (LR 45-501).

Commission Rule COOP-001 *General*, Rule COOP-002 *Fees* and Local Rule 45-501 will come into effect on **1 January 2020**. Pursuant to section 8 of the *Rule-making Procedure Regulation - Financial and Consumer Services Commission Act*, a rule comes into force on the day the rule is published electronically by the Commission or on such later date as is specified in the rule.

Background

On 4 September 2019, the Financial and Consumer Services Commission approved publication for comment the Coop Rules and the new LR 45-501, all of which were published electronically on the Commission web site on 4 September 2019 and in the 18 September 2019 edition of *The Royal Gazette*. The 60-day consultation period ended on 4 November 2019.

There was one comment letter submitted during the comment period. We have considered the comments received and thank the commenter for the input. The summary of the comments, together with our responses, is contained in **Annex D**. Rule COOP-001 is in **Annex A**, Rule COOP-002 is in **Annex B** and Local Rule 45-501 is in **Annex C**. We made some changes to the proposed rules published in September. Since these changes are not material, we are not publishing for a further comment period.

On 26 November 2019, the Minister of Finance and Treasury Board consented to the making of Rules COOP-001, COOP-002, and Local Rule 45-501.

Substance and Purpose of Rules

The new *Cooperatives Act*, SNB 2019, c.24, received Royal Assent on 14 June 2019. The new *Act* is targeted to be proclaimed on 1 January 2020. The purpose of Rule COOP-001 *General* is to cover details on the application of such items as prohibited names, required by-law provisions, inactive members, equity requirements, meetings and voting including the use of technology, auditor requirements and dispute resolution. Rule COOP-002 *Fees* provides the fees comparable to the ones for business corporations but are limited to certain items such as incorporations, revivals, annual reports and certificates. The purpose of LR 45-501 is to provide a prospectus and registration exemption from requirements under the *Securities Act* for cooperatives and credit unions.

Questions

If you have any questions on the Coop Rules, please refer them to:

Étienne LeBoeuf
Director Financial Institutions
Financial and Consumer Services Commission
Tel: 506-444-2875
Email: etienne.leboeuf@fcnb.ca

If you have any questions on LR 45-501, please refer them to:

Kevin Hoyt
Vice-President and Executive Director of Securities
Financial and Consumer Services Commission
Tel: 506-643-7691
Email: Kevin.Hoyt@fcnb.ca

Contents of Annexes

Annex A:	Rule COOP-001 <i>General</i>
Annex B:	Rule COOP-002 <i>Fees</i>
Annex C:	LR 45-501
Annex D:	Summary of Comments



**FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE COOP-001 *General***

**PART 1
PRELIMINARY MATTERS**

Definitions

- 1. (1)** In this Rule:

“Act” means the *Cooperatives Act*;

“equity” means the retained earnings, reserves from retained earnings, membership shares, investment shares and membership loans of a cooperative;

“investment share” means a share in the capital of a cooperative that is not a membership share;

“membership share” means a share described in section 32 of the *Act*;

“surplus” means the amount before distribution to members and investment shareholders of a cooperative.

- (2)** The definitions contained in the *Act* apply to this Rule, unless the terms in question are defined in this Rule.

**PART 2
INCORPORATION, NAMING & BYLAWS**

Application

- 2.** In addition to the requirements of section 7 of the *Act*, an application for incorporation must also include, if a cooperative is to issue securities, confirmation that the issuance will comply with the provisions of the *Securities Act* or regulations.

Prohibited Names

- 3.** For the purposes of section 15 of the *Act*, a cooperative shall not have a name:

- (a) that is similar to the name of another corporation or cooperative if the use of the name by the cooperative would be likely to confuse or mislead;
 - (b) that is deceptively misdescriptive, as set out in section 4 below;
 - (c) that is obscene or otherwise objectionable;
 - (d) that suggests or implies a connection with the Crown, or any member of the Royal Family, or the Government of Canada or the government of any province or territory of Canada, or any municipal or rural authority, without the consent in writing of the appropriate authority; or
 - (e) that the Director for any good and valid reason disapproves.
4. A cooperative name is deceptively misdescriptive if it is likely to mislead the public, in any language, with respect to any of the following:
- (a) the business, goods or services in association with which it is proposed to be used;
 - (b) the conditions under which the goods or services will be produced or supplied or the persons to be employed in the production or supply of the goods or services; and
 - (c) the place of origin of the goods or services.
5. For the purposes of section 18 of the *Act*, a cooperative must notify the Director of the registration of another name under the *Partnerships and Business Names Registration Act* within 15 days of that registration.

Making of By-laws

6. The first by-laws of a cooperative, made by the first directors in accordance with the *Act* and this Rule, must be confirmed, with or without variation, by extraordinary resolution of the members of the cooperative at the first meeting of members held in accordance with subsection 50(1) of the *Act*.
7. Subject to section 6, the by-laws of a cooperative may be made, amended, repealed or replaced only by an extraordinary resolution of the members of the cooperative.

Required By-law Provisions

8. Pursuant to subsection 10(2) of the *Act*, the by-laws of a cooperative must include provisions dealing with the following matters:
- (a) the name of the cooperative and the address of its registered office;
 - (b) the date of its fiscal year end;

- (c) for the purposes of paragraph 6(1)(d) of the *Act*, the maximum interest rate on any membership loan;
- (d) for the purposes of paragraph 6(1)(e) of the *Act*, the maximum dividend rate on any membership share;
- (e) for the purposes of subsection 13(3) of the *Act*, the restrictions on the cooperative's powers to borrow and to secure the payment of money;
- (f) for the purposes of paragraph 21(1)(a) of the *Act*, the method for a person to apply for membership in the cooperative;
- (g) for the purposes of paragraph 21(1)(b) of the *Act*, the criteria that a person must satisfy for approval as a member of the cooperative, including:
 - (i) if the cooperative has membership share capital, the minimum number of membership shares for which a member must subscribe, including any minimum amount required to be paid on account of the subscription price of the shares and terms of payment for those shares, and, if any, the maximum number of shares, or the maximum percentage of the issued and outstanding shares, that any one member may own,
 - (ii) if the cooperative requires membership loans from its members as a condition of membership or of continuing membership, the amount of the membership loan a member has to provide, the terms and conditions of the membership loan, including any minimum amount on account of a membership loan, and
 - (iii) the amount of any annual or other periodic membership fee a member must pay;
- (h) for the purposes of subsection 50(8) of the *Act*, the number of members or the percentage of the total number of members required to form a quorum at meetings of the members;
- (i) the notice required for annual and special meetings of members and meetings of investment shareholders;
- (j) the procedure to request a special meeting of members;
- (k) the manner in which a member may withdraw from the cooperative;
- (l) the process or procedures for the elections of directors;
- (m) the method of filling any vacancy on the board of directors;
- (n) the method of disposition of part of the surplus in proportion to the business done with members and with non-members; and
- (o) for the purposes of subsection 165(1) of the *Act*, the method of delivery of notices and documents.

Continuing Housing Cooperatives – by-law requirements

- 9.** In addition to the provisions required by section 8 above, pursuant to section 116 of the *Act* the by-laws of a continuing housing cooperative must also include provisions dealing with the following matters:
- (a) obligations of a member to pay housing charges of the cooperative;
 - (b) the manner in which housing charges are to be determined;
 - (c) the establishment of occupancy requirements of a housing unit of the cooperative; and
 - (d) the establishment of approval requirements of a budget of the cooperative.

Worker Cooperatives – by-law requirements

- 10.** In addition to the provisions required by section 8 above, pursuant to section 124 of the *Act* the by-laws of a worker cooperative must also include provisions dealing with the following matters:
- (a) the conditions of membership in the cooperative;
 - (b) the minimum percentage of permanent employees who are required to be members of the cooperative;
 - (c) any probationary periods for members of the cooperative; and
 - (d) the allocation of sub-contractual work to non-members.

PART 3 MEMBERSHIP

- 11.** Section 24 of the *Act* only applies to a class of members where membership was approved based on the members' using the services of the cooperative.
- 12.** Upon the death of a member of a cooperative without share capital, the deceased member is deemed to have withdrawn from the cooperative in accordance with section 22 of the *Act* on the day of his or her death.
- 13.** Upon the death of a member of a cooperative with share capital, the deceased member of the cooperative is deemed to have withdrawn from the cooperative in accordance with section 22 of the *Act*, and the membership shares of the deceased member are to be transferred or paid out in accordance with section 28 of the *Act*.

**PART 4
EQUITY REQUIREMENTS**

14. For the purposes of subsection 44(1) of the *Act*, a cooperative shall set aside annually at least 25% of that year's surplus to equity until equity is at least 30% of assets.
15. For the purposes of subsections 44(3) and 44(4) of the *Act*, dividends on membership shares, interest on membership loans and dividends on investment shares may only be paid out of 75% of annual surplus until the equity of a cooperative is 30% of assets.
16. For the purposes of subsection 44(5) of the *Act*, a repurchase or redemption of membership shares, a redemption of investment shares and a repayment of membership loans shall not occur if there are reasonable grounds to believe that the equity of a cooperative is or would fall below the level it was at the beginning of the latest fiscal year for which the cooperative is required to prepare financial statements. This restriction does not apply to payments of membership shares and membership loans on withdrawal or termination of membership under section 25 of the *Act*.
17. For the purposes of 45(2) of the *Act*, patronage return may only be paid out of 75% of annual surplus until the equity of a cooperative is 30% of assets.

**PART 5
MEETINGS & VOTING**

First Meeting

18. Members, at the first meeting held pursuant to subsection 50(1) of the *Act*, must:
 - (a) confirm, with or without variation, the by-laws of the cooperative that were adopted by the first directors;
 - (b) elect directors in accordance with sections 67 to 71 below;
 - (c) appoint an auditor to hold office until the close of the first annual meeting of members, unless the appointment of an auditor is dispensed with pursuant to section 84(3) of the *Act*; and
 - (d) if applicable, resolve not to have audited financial statements pursuant to section 81(b) of the *Act*.

Notice of Meetings of Members and of Investment Shareholders

19. Notice of the time and place of a meeting of the members or a meeting of the investment shareholders of a cooperative must be given not less than 14 days and not more than 30 days before the meeting.

20. In the case of a special meeting of the members or a meeting of the investment shareholders, the notice shall state the purpose of calling the meeting, and the business to come before it.
21. The notice of a meeting of the members or investment shareholders must be:
 - (a) posted at the registered office of the cooperative;
 - (b) at least one of the following:
 - (i) sent by mail or personally delivered to a member or investment shareholder at the latest address as shown in the records of the cooperative;
 - (ii) published in a paper publication generally available to the public in the place where the cooperative has its registered office;
 - (iii) provided electronically in accordance with section 96; and
 - (c) delivered by other means as required in the by-laws of the cooperative.
22. If an extraordinary resolution is required, the notice of the meeting where the extraordinary resolution is to be adopted shall set out the contents and purpose of the resolution.
23. A member or investment shareholder who is entitled to attend a meeting of a cooperative may waive notice of the meeting.
24. Attendance at a meeting by the member or investment shareholder is a waiver of notice of the meeting, except when the member or investment shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called.

Special Meeting

25. The request for a special meeting under subsection 50(4) of the *Act* must be made in writing by at least 50 members or ten per cent of the members, whichever is the lesser, and must state the nature of the business to be transacted at the special meeting.
26. Subject to section 27 below, a special meeting must be held within three months from the board of directors' receipt of the written request set out in section 25 and, subject to the by-laws, at a place as determined by the board of directors.
27. The board of directors does not have to hold a special meeting upon receipt of the written request specified in section 25 if the nature of the business specified in the notice is a matter outside the power of the members or is a matter described in paragraphs 58(9)(b), (c), (d) or (e) of the *Act*.
28. The agenda for a special meeting will only deal with the business specified in the notice of the meeting.

Meeting of investment shareholders

- 29.** The agenda for a meeting of investment shareholders shall only deal with the business specified in the notice of the meeting.

Annual Meeting

- 30.** The agenda for annual meetings of the cooperative must include the following:
- (a) call to order by the Chair;
 - (b) reading and disposal of the minutes of the preceding meeting;
 - (c) business arising out of the minutes;
 - (d) reports of officers and board of directors, including any attestations by directors and officers that they have complied with applicable legislation;
 - (e) reports of committees;
 - (f) reports of auditor, if applicable;
 - (g) consideration of financial statements;
 - (h) if by-laws so provide, voting on dividends as proposed by the board of directors and voting on patronage returns as proposed by the board of directors;
 - (i) unfinished business, if any;
 - (j) election of directors;
 - (k) appointment of auditor, or applicable extraordinary resolution not to appoint an auditor and financial statements not to be audited;
 - (l) new business, if any;
 - (m) extraordinary resolutions, if any;
 - (n) proposed date and place of next meeting; and
 - (o) adjournment.

Proposals

- 31.** For the purposes of subsections 58(2) and (3) and paragraph 58(9)(a) of the *Act*, a proposal may not be attached to the notice of a meeting if the proposal was submitted less than 90 days before the anniversary date of the last annual meeting of the cooperative.

32. Pursuant to subsection 58(6) of the *Act*, a cooperative may request proof from a person who submits a proposal under subsection 58(3) of the *Act* within 10 days of receiving the proposal, and the person who submits the proposal shall provide the proof within 14 days of the cooperative's request.
33. If the cooperative refuses to attach a proposal to a notice of annual meeting in accordance with subsection 59(1) of the *Act*, the cooperative shall notify the person submitting the proposal of its refusal and the reasons for the refusal within 14 days after receipt of the proposal or the day on which it receives the proof requested under subsection 58(6) of the *Act*, as the case may be.

Quorum

34. If a quorum is present at the opening of a meeting of members, the members present proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.
35. Subject to section 36, if within fifteen minutes from the time appointed for any meeting of the members a quorum is not present:
 - (a) the meeting shall stand adjourned to not less than seven days thereafter;
 - (b) all members shall be notified of the time and place of the said adjourned meeting at least five days before the date thereof; and
 - (c) the decisions of the adjourned meeting are binding if there are at least three members present.
36. If a meeting is convened on the request of members and a quorum is not present within fifteen minutes from the time appointed for the meeting, the meeting shall be dissolved.
37. Where a quorum is present at the opening of a meeting of members and the meeting is adjourned for less than 30 days, notice of the continued meeting is not necessary other than by announcement at the meeting that is adjourned.
38. If a meeting of members is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the continued meeting must be given as for an original meeting and the continued meeting must have quorum.
39. Unless otherwise provided in the articles of the cooperative, a quorum is present at a meeting of investment shareholders, if the holders of the majority of the investment shares entitled to vote at the meeting are present in person or by proxy.
40. If a quorum is present at the opening of a meeting of investment shareholders, the investment shareholders present proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

41. If within fifteen minutes from the time appointed for the meeting of investment shareholders a quorum is not present:
 - (a) the meeting shall stand adjourned to not less than seven days thereafter;
 - (b) all investment shareholders shall be notified of the time and place of the adjourned meeting at least five days before the date thereof; and
 - (c) the adjourned meeting must have quorum at the opening of the meeting.
42. Where a quorum is present at the opening of a meeting of investment shareholders and the meeting is adjourned for less than 30 days, notice of the continued meeting is not necessary other than by announcement at the meeting that is adjourned.
43. If a meeting of investment shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the continued meeting must be given as for an original meeting, and the continued meeting must have quorum at the opening of the meeting.

Voting

44. Subject to the by-laws of a cooperative, a member of the cooperative may participate and vote in a meeting of the members by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the cooperative makes available such a communication facility.
45. A member participating in a meeting referred to in section 44 is deemed to be present at the meeting.
46. Voting may only be carried out under section 44 if the votes can be gathered in a manner that permits their verification.
47. Voting in person at a meeting of the members of a cooperative takes place by a show of hands or another similar method except when a ballot is demanded by a member at the meeting. A member may demand a ballot either before or after a vote by show of hands or other similar method.
48. A ballot is required for the election of directors when the number of nominees exceeds the number of directors to be elected.
49. The by-laws of a cooperative may authorize voting by mail ballot on any matter.
50. Sections 44 to 47 and section 49 also apply to an investment shareholder in relation to a meeting of investment shareholders
51. Unless the by-laws provide otherwise, and except when a written statement is submitted under subsection 87(3) of the *Act*, a resolution in writing signed by all the members is as valid as if it had been passed at a meeting of members.

52. A copy of every resolution must be kept with the minutes of the meetings of the members.
53. Unless the by-laws provide otherwise, a resolution in writing signed by all the investment shareholders entitled to vote on that resolution is as valid as if it had been passed at a meeting of those investment shareholders.
54. A copy of every resolution of investment shareholders must be kept with the minutes of the meetings of the investment shareholders.

PART 6 DIRECTORS

First Meeting of Directors

55. Shortly after its incorporation and before the first meeting of members, the directors of the cooperative shall hold their first meeting which must be called by a director by giving at least five days' notice of the meeting to each director, stating the time and place of the meeting.
56. At the first meeting of directors, the first directors shall:
 - (a) adopt forms of security certificates and forms of cooperative records;
 - (b) admit persons to membership in the cooperative and issue or authorize the issuance of membership shares and membership loan certificates, as applicable;
 - (c) appoint officers;
 - (d) make arrangements with an appropriate financial institution;
 - (e) adopt the by-laws of the cooperative;
 - (f) identify the required governance and management policies to be developed; and
 - (g) transact any other business necessary to organize the cooperative.
57. At the first meeting of directors, the first directors may appoint an auditor to hold office until the close of the first meeting of the members.

Notice of Meetings of the Board of Directors

58. Unless the by-laws provide otherwise, notice of a meeting of the board of directors of a cooperative must be sent by mail or may be personally delivered to each director at least ten days before the date of the meeting to the latest address of each director as shown on the records of the cooperative, or provided electronically in accordance with section 96.

- 59.** The notice of a meeting of the board of directors must specify the time and place of the meeting but need not specify the matters to be dealt with at the meeting unless the matter is to:
- (a) issue or redeem membership shares or investment shares;
 - (b) submit to members or investment shareholders matters required to be decided at a meeting of the members or investment shareholders;
 - (c) fill a vacancy among the directors or in the office of the auditor; or
 - (d) declare:
 - (a) dividends on membership shares or investment shares;
 - (b) interest on membership loans; or
 - (c) patronage returns.
- 60.** A director of a cooperative may waive notice of the meeting of the directors.
- 61.** Attendance at a meeting of the directors of a cooperative is a waiver of notice of the meeting, except when a director attends the meeting for the express purpose of objecting to the meeting.

Voting by Directors

- 62.** Subject to the by-laws of the cooperative, a director of the cooperative may participate and vote in a meeting of the directors of the cooperative by means of a telephonic, electronic or other communication facility if the facility permits all persons participating in the meeting to communicate adequately with each other during the meeting.
- 63.** A director of a cooperative participating in a meeting of its directors by a means referred to in section 62 is deemed to be present at the meeting.
- 64.** A resolution in writing signed by all the directors is as valid as if it had been passed at a meeting of the board of directors.
- 65.** A copy of every resolution must be kept with the minutes of the meetings of the board of directors.

Quorum

- 66.** The majority of the fixed number of directors as stated in the articles or the minimum number of directors as stated in the articles is the quorum for a meeting of the board of directors. To constitute a quorum, a majority of the directors at the meeting must be members of the cooperative, or representatives of members that are entities.

Elections

- 67.** The board of directors of a cooperative shall be elected at the annual meeting.
- 68.** At the first general meeting of the cooperative, for the purposes of the first elected board, one-third of the board of directors shall be elected to hold office until the first annual meeting, one-third shall be elected to hold office until the second annual meeting and the remaining third shall be elected to hold office until the third annual meeting.
- 69.** At each annual meeting directors shall be elected to replace those retiring and directors so elected at any annual meeting shall hold office for three years.
- 70.** Where a cooperative has fifteen or more members, directors of the association may be re-elected but shall not serve more than three or, if the by-laws of the cooperative specify, two consecutive three-year terms without a lapse of at least one year.
- 71.** For the purposes of subsection 68(7) of the *Act*, an appointment made by the remaining directors to fill a vacancy is limited to the remainder of the original term. Any time served to fill a vacancy shall be considered a three-year term.

Removal of a Director

- 72.** A director may be removed from office as follows:
 - (a) if the director was elected to the board of directors, by a vote at a special meeting of the members of the cooperative; or
 - (b) if the director was appointed to fill a vacancy on the board of directors, by a vote at a special meeting of the directors of the cooperative.
- 73.** The vacancy created by the removal of a director may be filled at the meeting at which the director was removed.
- 74.** A director who is subject to removal from office is entitled to attend and address the special meeting, or to submit a written statement, giving the director's reasons why the director opposes the proposed removal.
- 75.** When the cooperative receives a statement, it shall ensure that a copy of it is sent without delay to the Director and to every person who is entitled to receive notice of the special meeting.

Remuneration

- 76.** The directors of a cooperative shall be paid the remuneration, if any, that is approved by the members of the cooperative.
- 77.** The amounts paid to directors of a cooperative as reimbursement for the reasonable expenses incurred in the performance of their duties shall be reported to the members of the cooperative.

PART 7
ANNUAL RETURNS AND FINANCIAL DISCLOSURE

Exemptions from Audited Financial Statements

- 78.** A cooperative that has between \$250,001 and \$499,999 in business volume as stated in its financial statements for the preceding fiscal year may have its auditor review its financial statements instead of an audit if the members have, by an extraordinary resolution passed at a special meeting duly called for that reason or at an annual meeting of members, resolved not to have an audit and to instead have a review.
- 79.** A cooperative that has between \$100,000 and \$250,000 in business volume as stated in its financial statements for the preceding fiscal year may either have its auditor compile or review its financial statements instead of an audit if the members have, by an extraordinary resolution passed at a special meeting duly called for that reason or at an annual meeting of members, resolved not to have an audit and to instead have a compilation or review.

Requirements for Financial Statements

- 80.** For the purposes of subsection 82(1) of the *Act*, financial statements of a cooperative shall include at least the following:
- (a) a balance sheet;
 - (b) a statement of retained earnings;
 - (c) an income statement; and
 - (d) a statement of changes in financial position.

Requirements for Auditors' Reports

- 81.** The auditor of a cooperative that has between \$100,000 and \$250,000 in business volume as stated in its financial statements for the preceding fiscal year may either report on a compilation, review or audit of the financial statements, subject to the level of engagement.
- 82.** The auditor of a cooperative that has between \$250,001 and \$499,999 in business volume as stated in its financial statements for the preceding fiscal year may either report on a review or audit of the financial statements, subject to the level of engagement.
- 83.** The auditor of a cooperative that has more than \$500,000 in business volume as stated in its financial statements for the preceding fiscal year must report on an audit.

Exemptions from Appointing an Auditor and Audited Financial Statements

- 84.** Cooperatives that have less than \$100,000 in business volume as stated in their financial statements for the preceding fiscal year may, by an extraordinary resolution passed at a special meeting duly called for that reason or at an annual meeting of members, resolve not to appoint an auditor pursuant to subsection 84(3) of the Act.
- 85.** Cooperatives that have not completed their first fiscal year may by extraordinary resolution passed at the first meeting of members, resolve not to appoint an auditor pursuant to subsection 84(3) of the Act.
- 86.** Cooperatives that do not appoint an auditor in accordance with sections 84 and 85 must prepare their financial statements in accordance with section 80.

PART 8 CONTINUING HOUSING COOPERATIVES

Disposal of Personal Property

- 87.** Where a member or former member of a continuing housing cooperative abandons personal property in a housing unit of the cooperative, the cooperative may dispose of the abandoned personal property in accordance with sections 88 to 93.
- 88.** Where the abandoned property is of no value; where the value of the abandoned property is less than the expected costs of removal, storage and sale; or where the retention of the property would be unsanitary or dangerous, the cooperative may dispose of the abandoned property in whatever manner it considers appropriate.
- 89.** Where the abandoned property has a value greater than the total expected costs of removal, storage and sale, the cooperative shall:
 - (a) make a list of the abandoned property and store the abandoned property for a period of 60 days;
 - (b) send a copy of the list to the member or former member at the earliest reasonable opportunity if the address of the member or former member is known to the cooperative;
 - (c) return the property to the member or former member if the member or former member claims the property within the 60-day storage period and if the member or former member pays the cooperative the costs of removal and storage of the property;
 - (d) following the expiration of the 60-day storage period, sell the abandoned property by public auction or other public sale that is likely to obtain multiple offers to purchase the property if the property has not been claimed and the costs of removal and storage have not been paid.

- 90.** If the proceeds from the sale of the abandoned property exceed the amounts incurred by the cooperative for the removal, storage and sale of the abandoned property, the proceeds may be used by the cooperative to discharge any debt owing by the member or former member to the cooperative.
- 91.** If there is any amount remaining following the payments authorized in section 90, the cooperative must:
- (a) forward these proceeds to the member or former member, if the cooperative has or can reasonably ascertain a current address for the member or former member; or
 - (b) retain these proceeds for a period of three years if the cooperative does not have and cannot reasonably ascertain the current address of the member or former member.
- 92.** If the proceeds remain unclaimed by the member or former member after the period set out in paragraph 91, the proceeds become the property of the cooperative.
- 93.** A cooperative that substantially complies with sections 88 to 93 is not liable to the member or former member, or a person claiming through the member or former member, for the removal, storage, disposal or sale by the cooperative of the abandoned property of the member or former member.

Continuing Housing Cooperatives - Restrictions in articles

- 94.** For the purposes of paragraph 115(1)(d) of the *Act*, entities entitled to a transfer or distribution of remaining property of a dissolved continuing housing cooperative may include one or more registered charity or non-profit organization.

PART 9 WORKER COOPERATIVES

Permanent employees

- 95.** For the purposes of paragraph 124(b) of the *Act*,
- (a) the following persons are not permanent employees of a worker cooperative:
 - (i) a person who is employed on a probationary period of less than three years;
 - (ii) a person who is under contract for a period of less than two years;

- (b) the minimum percentage of permanent employees who are required to be members of a worker cooperative is at least 51% of the permanent employees of the cooperative or those of any entity controlled by the cooperative, such percentage being attained not later than five years after the incorporation of the cooperative or the acquisition of a business by the cooperative.

PART 10 NOTICE REQUIREMENTS

- 96.** For the purposes of subsection 165(1) of the *Act* a notice, a document or any information required by this *Act*, the regulations or the articles or by-laws of a cooperative to be delivered to a member, investment shareholder or director of the cooperative may be delivered electronically to the member, investment shareholder, or director:
- (a) if the articles or by-laws of the cooperative do not prohibit electronic delivery;
 - (b) if the recipient asks or agrees to receive it electronically;
 - (c) in the case of electronic delivery that does not involve direct delivery to the recipient, if the recipient is informed directly without delay of the availability of the document, notice or other information and where it may be found or how it may be accessed; and
 - (d) if the method of delivery permits the recipient to have easy access to the document, notice or information and to retain it in a permanent form.

PART 11 DISPUTE RESOLUTION

- 97.** Disputes or controversies among members and the cooperative must be resolved in accordance with mediation and/or arbitration as provided in this section unless the by-laws of the cooperative provide an alternative, comprehensive dispute resolution process that is led by an independent third party.
- 98.** If a dispute arises out of or is related to the articles or by-laws of a cooperative, or is related to any aspect of the operations of the cooperative, and if this dispute cannot be resolved in private meetings between the member(s) and the cooperative, then without prejudice to or in any other way derogating from the rights of the members set out in the *Act*, articles or bylaws, as an alternative to a law suit or legal action, the dispute must be settled by a process of dispute resolution as follows:

- (a) The dispute or controversy shall first be submitted to mediation before either a panel of mediators whereby each party appoints one mediator, and the two mediators so appointed jointly appoint a third mediator (or, if the parties agree, submitted to mediation before one or two agreed upon mediators), and the mediator(s) will then meet with the parties in question in an attempt to mediate a resolution between the parties;
- (b) If the parties are not successful in resolving the dispute through mediation, then the dispute shall be settled by arbitration before a single arbitrator, who shall not be any one of the mediators referred to above, in accordance with the New Brunswick *Arbitration Act*;
- (c) If the matter proceeds to arbitration, the parties agree that all proceedings relating to arbitration shall be kept confidential and there shall be no disclosure of any kind, and that the decision of the arbitrator shall be final and binding and shall not be subject to appeal on a question of fact, law or mixed fact and law;
- (d) All costs of the mediators appointed in accordance with this section shall be borne equally by the parties to the dispute or the controversy. All costs of the arbitrators appointed in accordance with this section shall be borne by such parties as may be determined by the arbitrators.

**PART 12
COMING INTO FORCE**

99. This Rule comes into force on *[Insert date]*.



**FINANCIAL AND CONSUMER SERVICES COMMISSION
RULE COOP-002 FEES**

**PART 1
PRELIMINARY MATTERS**

Definitions

- 1. (1)** In this Rule:

“Act” means the *Cooperatives Act*.

- (2)** The definitions contained in the Act apply to this Rule, unless the terms in question are defined in this Rule.

**PART 2
FEES**

- 2. (1)** All fees set out in the Rule are payable to the Commission.
- (2)** The fees payable for an application for incorporation or a revival are \$300.
- (3)** The fees payable to accompany the annual return are \$60.
- (4)** The fees payable for a certificate issued by the Director are \$50.
- (5)** The fees payable for a certified copy of articles of a cooperative, notice of registered office or change of address of a registered office form and certificates issued by the Director are \$20.

**PART 3
RECOVERABLE FEES AND COSTS**

- 3.** For a compliance review, the following fees and expenses are recoverable by the Commission under section 134 of the Act:

- a. \$50 per hour for each employee of the Commission involved in the review,
- b. disbursements properly incurred by the Commission for a compliance review,
- c. fees paid or payable to an expert,
- d. disbursements properly incurred by an expert,
- e. fees paid or payable for legal services, and
- f. disbursements properly incurred in connection with the provision of legal services.

**PART 4
COMING INTO FORCE**

This Rule comes into force on *[Insert date]*.



FINANCIAL AND CONSUMER SERVICES COMMISSION

LOCAL RULE 45-501

PROSPECTUS AND REGISTRATION EXEMPTIONS

PART 1: DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this rule

“investment share of a cooperative” means a share in the capital of a cooperative that is not a membership share;

“membership share of a cooperative” means a share described in section 32 of the *Cooperatives Act*.

Interpretation

1.2 Terms defined in National Instrument 14-101 *Definitions* and used in this Rule have the respective meanings ascribed to those terms in that Instrument.

PART 2: EXEMPTIONS

Cooperatives

2.1 (1) The dealer registration requirement does not apply to a trade in a security of a cooperative if the security is one or more of the following:

(a) a membership share of a cooperative;

(b) an investment share of a cooperative where the acquisition cost of a share is \$1,000 or less and the total cumulative investment of the individual relying on the exemption does not exceed \$10,000.

(2) The prospectus requirement does not apply to a distribution in a security of a cooperative in the circumstances referred to in subsection (1).

Credit Unions

- 2.2 (1)** The dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions Act*.
- (2)** The prospectus requirement does not apply to a distribution in a security in the circumstances referred to in subsection (1).

PART 3: EFFECTIVE DATE

- 3.1** This rule comes into force on 1 January 2020.

SUMMARY OF COMMENTS AND FCNB RESPONSES

Comments on proposed cooperative rules COOP-001 *General* and COOP-002 *Fees*

<u>Issue</u>	<u>Summarized Comment</u>	<u>Responses</u>
<u>Comments on rule COOP-001 <i>General</i></u>		
Section 59: Notice of meetings of the board of directors	One commenter suggested that the agenda and supporting material for a meeting of the board of directors should be provided to directors in advance with the notice of meeting, and the board could modify the agenda during the meeting, if necessary.	We have reviewed section 59 and made changes to clarify which agenda items the board will be required to provide to directors in the notice of meeting of the directors.
Section 71: Elections	One commenter suggested that the board notify members of any appointment of a director to fill a vacancy within 30 days of the appointment, or at the next annual meeting, whichever is sooner.	The <i>Cooperatives Act</i> already provides a way for a member to verify who are the directors of the cooperative. The <i>Act</i> requires that a cooperative provide the Director with a notice of change of directors within 15 days after the change of directors. The FCNB website will have a search function for cooperatives that will include the list of directors of each cooperative.
Section 97: Dispute resolution	One commenter pointed out that in many circumstances a conflict in a cooperative results in the termination of membership. This commenter was concerned that the termination process should have third-party intervention, similar to the dispute resolution process.	The termination of membership process is provided in the Act and not in the rule. Termination is appealable to a membership meeting.
	One commenter indicated that any “comprehensive conflict resolution process” should include knowledgeable and independent agreed upon third parties.	We have updated the dispute resolution section in the rule to specify that a cooperative can have an alternative dispute resolution process, but that process must be led by an independent third party.
Part 7: Annual returns and financial disclosure	One commenter stated that members should know about their rights and obligations as members of a cooperative and suggested that the	We agree with the commenter that members should be aware of their rights and obligations as members of a cooperative. Under the Act and rule, a cooperative is

	cooperative's annual return provided to FCNB include more details on the cooperative's educational activities, including any committee activities, costs of educational activities and communication with members.	required to provide disclosure to members of the cooperative's activities. The annual meeting provides this opportunity for the cooperative to inform its members by providing disclosure, including reports of various committees including an education committee (if any), reports of the board of directors, the presentation of financial statements and the report of the auditor.
Comments regarding the <i>Cooperatives Act</i>		
Access to director meeting minutes	One commenter suggested that members should have access to minutes of meetings of directors as a best practice for governance, transparency and accountability of directors. Any information considered confidential or personal could be kept separate and only available to directors. Members should be able to access board decisions directly.	We thank the commenter for this comment. We have considered this suggestion, however, our objective on the matter is to have provisions that are harmonized with other jurisdictions.
Incorporation of international cooperative principles	One commenter wondered if the <i>Cooperatives Act</i> could incorporate the international cooperative principles in a preamble, similar to the federal <i>Canada Cooperatives Act</i> .	We thank the commenter for this comment. Though this comment regarding the <i>Cooperatives Act</i> is outside the scope of this consultation on the cooperative rules, we would like to point out that the definition of "cooperative basis" included in the Act draws from those international cooperative principles.
<u>Comments on rule COOP-002 Fees</u>		
No comments received.		
<u>Comments on local rule 45-501 Prospectus and Registration Exemptions</u>		
No comments received.		