

## **Resolved as a Special Resolution of the Members**

1. Rule 126 of the Rules of the Mid Island Consumer Services Co-operative be amended by replacing its current provisions, namely:

### **“Borrowing Powers**

- 126** (1) In addition to the powers given to directors by the Act, and subject to the limitations imposed by sub rule (2), the directors, for the purposes of the Association and on behalf of the Association, may:
- (a) borrow or raise money in the manner and amount, from the sources, on terms and conditions, and
  - (b) issue notes, bonds, debentures and other debt securities as the directors consider appropriate.
- (2) Unless authorized to do so by a special resolution of the members, the Association must not secure the repayment of money borrowed by the Association by means of a charge on the whole or substantially the whole of the undertaking of the Association.”

with the following:

### **“Borrowing powers**

- 126** In addition to the powers given to directors by the Act, the directors, for the purposes of the Association and on behalf of the Association, may:
- (a) borrow or raise money in the manner and amount, from the sources on terms and conditions,
  - (b) issue notes, bonds, debentures, and other debt securities, and
  - (c) secure the repayment of money borrowed by the Association by means of mortgages, charges, security interests or other security on the whole or any part of the undertaking of the Association, all as the directors consider appropriate.

Further, the securing of the repayment of money borrowed by the Association by means of a charge on the whole or substantially the whole of the undertaking of the Association shall not require authorization by a special resolution or other resolution of the members.”

Background:

- 1) Conventional financial institutions in Canada typically require security over all of the present and after acquired personal property of their customer to support significant commercial loan facilities.
- 2) The proposed amendment will give the directors of Mid Island the fiduciary responsibility to grant this standard security.
- 3) Without a provision in the Rules of the Association permitting the directors of the Mid Island to grant this sort of security without a special resolution of Mid Island’s members, new acquisitions by Mid Island Co-op that may require financing are severely constrained. It would be impractical to obtain a special resolution of the members authorizing the granting of the security in a timely manner to provide for acquisition financing and, as a result, Mid

Island will be unable to compete with other potential buyers such as companies who would not be subject to this sort of member approval requirement. Even where this financing handicap could be overcome, the cost of borrowing would be significantly higher where the full assets of Mid Island cannot be pledged as security and/or Mid Island would not be able to obtain financing proposals from more than one financial institution.

- 4) The legislation governing companies does not contain this restriction, putting companies at an advantage over Mid Island Co-op in obtaining financing necessary for an acquisition in a timely manner.
- 5) There is little clear guidance from the *Co-operative Association Act* or the Courts as to what constitutes “all or substantially all of the undertaking of the Association” putting Mid Island Co-op at even more of a disadvantage compared to other potential purchasers who are not subject to these restrictions. To some degree, the directors are left guessing as to the extent of their authority as some Court decisions suggest that the directors’ ability to authorize the granting of security without a special resolution of the members may be surprisingly low. This makes it difficult for Mid Island to finance new acquisitions at competitive interest rates or at all.