

**Dakota Growers Pasta Company and the Discourse of Conversion**

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## **Abstract**

This report is intended to discern the nature and kinds of arguments used by both proponents and opponents of the conversion of Dakota Growers Pasta Company from a cooperative to a corporation. Three major kinds of needs discourse are employed in this analysis: Expert, oppositional, and reprivatization. Expert discourse is discussed first because it is the discourse presented by the proponents of conversion of the cooperative. Oppositional discourse is discussed next as this discourse arises among opponents to cooperative conversion. Finally, reprivatization discourse is discussed as it arises in response to the oppositional discourse. The report concludes with a summary and recommendations for dealing with threats of conversion.

Keywords: Cooperatives, cooperative conversion, discourse analysis

## Table of Contents

Highlights	4
Introduction	12
Purpose of Research	13
Discourse Analysis	13
Expert Discourse	14
Expert Discourse and Cooperative Conversion	15
Equity Liquidity Motive	15
Equity Access, Corporate Acquisition, Cost of Equity Motives	16
Oppositional Discourse	16
Oppositional Discourse and Cooperative Conversion	16
Populist-Voluntarist Metaphor	17
Social Materialist Metaphor	18
Reprivatization Discourse	19
Reprivatization by Depoliticization	19
Reprivatization by Economism	20
Reprivatization Discourse and Cooperative Conversion	20
Methodology	21
Data	22
Interviews With Cooperative Members and Cooperative Knowledgeables	22
Filing With the Securities and Exchange Commission	23
Newspaper Accounts, Editorials, and Op-Editorials	23
Analysis	24
Report Format	25
Weather, Delivery, and Disease Discourse	25
Expert Discourse	30
Equity Liquidity Discourse	30
Equity Access Discourse	39
Legal Discourse	51
Oppositional Discourse	57
Populist-Voluntarist Discourse	57
Social Materialist Discourse	66
Reprivatization Discourse	70
Reprivatization by Economism Discourse	70
Reprivatization by Depoliticization Discourse	75
Summary	82
Conclusions	87
Recommendations	89
References	93

## Highlights

The intent of this research is to discern the nature and kinds of arguments used by both proponents and opponents of cooperative conversion. It attempts to determine the extent to which the proponents drew upon the expert discourse of neoclassical economic as rationale for cooperative conversion, the extent to which opponents drew upon oppositional discourse to oppose conversion, and what discourses were used by proponents of conversion to neutralize the arguments of those opposing conversion. Finally, it tries to assess which of the discourses were more effective in convincing members to vote for conversion.

The work of Nancy Frazer (1989) is used to analyze the discourse of conversion. According to Frazer, in late capitalist societies the discussion about what people need has become an arena for the making and contesting of political claims such that needs talk has been institutionalized as a major focus of political discourse. Dominant groups communicate needs interpretations that reject, neutralize or co-opt counter-interpretations (depoliticization), while subordinate groups communicate needs interpretations that confront dominant ones.

Capitalist economic institutions depoliticize matters by treating them as technical problems to be solved by managers and professionals. By relegating problems as beyond the understanding of novices and as being only fully understood by experts, capitalist economic institutions attempt to remove these problems from the realm of public discourse and reserve them for the realm of the professionals. Within the expert discourse analysis, the explanations for cooperative conversion offered by neo-classical economists include equity liquidity motive and the equity access, corporate acquisition, and cost of equity motives.

Oppositional forms emerge when subordinate groups politicize runaway needs by communicating needs interpretations that contest the dominant need interpretations. These groups

contest their status and the predefined need interpretations assigned to or held by them. Two oppositional discourses used in the discourse analysis of conversion include social materialist and populist-voluntarism.

Reprivatization discourses attempt to re-privatize the oppositional discourse by separating the economic from the political through depoliticization. It is through this discourse that dominant groups communicate needs interpretations that reject, neutralize or co-opt oppositional interpretations. Reprivatization discourses also depoliticize concerns by treating them as if they were naturally economic concerns through economism. The two reprivatization discourses considered here included reprivatization by depoliticization and reprivatization by economism.

The textual data used in the analysis are found in the documents filed with the Securities Exchange Commission by Dakota Growers Pasta Co.; transcripts of interviews with cooperative members and knowledgeable; and analysis of newspaper accounts, letters to the editor, and opinion pieces in the state's major daily newspapers. The expert, oppositional, and reprivatization discourse categories provided the ideal-typical, deductive categories that were used to code the data.

Data from all three discourse formats confirm that weather conditions and disease had established the context in which the discourse of conversion would take place. Together these two conditions motivated the board of directors to offer conversion as a solution as well as for members to vote for it. Excessive rainfall and humidity and the rise of *fusarium* head blight created conditions in which members were neither able to raise durum nor to fulfill their requirements to deliver durum to the cooperative. This situation led more and more members to use the durum purchasing pool to fulfill their obligations, and created problems for the cooperative in procuring quality durum.

From the interviews, the news articles, and the SEC filing, the discourse of liquidity was couched in the expert discourse of neo-classical economics rationale for conversion based on equity liquidity as well as legal discourse about the tax consequences of various alternatives. By discussing the consequences for liquidity of alternative economic arrangements, the board of directors dismissed all of them except for corporate conversion. Although the neo-classical economics discourse of equity liquidation is somewhat obtuse, and even more so when explained in terms of tax consequences of alternative forms of business organization, it served as a bridge discourse between the experts in tax law and neoclassical economics and members, with the board of directors acting as an intermediary. Upon expressing their desires to redeem their equity (an in-order-to discourse), the board of directors responded with procedures for translating these politicized needs into administrative needs. By resolving the “in-order-to” needs of the members, the board of directors also resolved perceived needs of the company in regards to equity access.

In all of the discourse formats, the board of directors made a case for cooperative conversion because of the need for access to capital to facilitate growth. A largely unexamined assumption, in the entire expert discourse of equity access, was that of the necessity of growth and expansion. Because the company had grown and expanded significantly since its founding, many assumed that this might well be the case in the future. In order to persuade members to vote for conversion, the board of directors laid out the disadvantages of remaining a cooperative as well as the advantages for converting to a corporation in regards to equity access. By drawing upon the expert discourse of equity access, buttressed by the experts at a regional investment firm, the board of directors concluded that a corporation was the only form of business organization that could provide the kind of access to capital it believed was necessary for growth.

By hinting that purchasing durum from non-members through the durum purchasing pool may be in violation of cooperative tax law, and by holding out the threat of an IRS investigation about this practice, the board of directors and officials used legal discourse to instill fear among members and to promote conversion as the only solution. The entire discourse about the taxable status of the cooperative conducting non-member business and the taxable implications of conversion, had the effect of leaving the ordinary member of the cooperative sufficiently confused by the obscurity and ambiguity of the legal analysis. Without a legal background in both tax and cooperative law, members lack the ability to challenge the interpretation of the filing thus removing this entire area from common discourse and leaving it to the realm of the company's legal counsel and accountants.

Those opposed to conversion used populist-voluntarist discourse most often. Several themes emerged analysis of the data in the interviews, news articles and opinion pieces that reflected a populist-voluntarist view of cooperatives. First, cooperatives consist of their members as owners who govern them democratically. Second, that conversion would result in the weakening of local ties. Third, the company might be being dominated by absentee, non-local interests. The contrast of patronage dividends with shareholder returns reflected the populist-voluntarist perspective of cooperatives benefiting members according to patronage, but following conversion the corporation would benefit shareholders based upon return on investment. The possibility of centralization of power in the board of directors reflected populist-voluntarist view of cooperatives as being governed on a democratic basis and existing to serve members' needs. That their benefits would not be derived from mandatory dividends but from stock manipulation reflected populist-voluntarist perspective of cooperatives being based on patronage and benefiting user-owners proportional to use. Fears that investors who own or control a large number of

shares might control the company and make decisions detrimental to durum producers demonstrated populist-voluntarist concerns that after conversion the company would not exist to empower members or to meet their needs but rather would be focused on narrower economic concerns. The criticism that conversion would be abandoning the original purposes for which the cooperative was organized reflected populist-voluntarist views that cooperatives exist to serve the needs of their member users and that upon conversion the company would no longer be providing economic advantages to them.

It was rare for a social materialist oppositional perspective to be offered in opposition to conversion. Several social materialist discourse themes arose from the interviews and newspaper accounts. First, conversion would represent a loss of economic advantage for producer members. Second, cooperatives were a means for producers to take control of their destiny. Third, conversion threatened control of producer-generated capital by non-farmers. Fourth, cooperatives had been seen as a solution to producers' economic woes. Fifth, cooperatives were perceived as being fundamentally different from corporations. Sixth, the state had always been an economic laboratory and cooperatives were part of that experience. Seventh, there had always been an alliance between corporations and the Republican Party and cooperatives and the Democratic Party. These themes recognized the tenet of the social materialist discourse that sees cooperatives as class practice of producers that act in their collective class interest, and that conversion would be a permanent loss of this class practice. These themes also reflected the historic tension between those who viewed cooperatives as acting in the collective class interests of farmers, as opposed to those who viewed cooperatives acting in the individual, economic interests of farmers.

The data from the interviews, the newspaper articles, and SEC filing reflected the reprivatization by economism discourse in several respects. Members had begun to see their cooperative as a source of income. They wanted to divest of their membership because they perceived that the dividends they received were less than the return on investment forgone. They viewed the cooperative as if it was an investor-owned firm, and as member-investors, they sought the opportunity to divest of their stock by voting for conversion. Furthermore, because of the hegemony of the neo-classical economics discourse, they saw the cooperative as a collection of individuals or as a business no different from any other business.

From a reading of the SEC filing and news articles from a reprivatization by depoliticization perspective, some of the discourse in the SEC filing and comments from board members and officers arose in response to a number of members' concerns about conversion. First, converting the company reflected badly on cooperatives. Second, conversion to a corporation would be a significant change from a cooperative. Third, producers might lose a market for durum. Fourth, corporate income would be taxed twice. Fifth, non-producer interests might control the re-organized company. Sixth, out-of-state interests could acquire the company through a hostile takeover. All of these concerns have their origins in the populist-voluntarist and social materialist oppositional discourses. In order to reject these concerns, the board of directors had to incorporate them into the discourse. Therefore, first they had to be recognized and then later dismissed or minimized. However, by recognizing some of the members' concerns and incorporating them into the discourse, the board of directors increased their legitimacy and universality for further contention.

From the analysis of the discourse of conversion, it appears that there were perhaps four major explanations for the success of the campaign to convert the cooperative to a corporation.

Extreme weather conditions and the rise of *fusarium* head blight made it difficult, if not impossible, for members to raise durum. When members were no longer raising durum, they began to think less about adding value to durum and thought instead about adding value to their shares of stock, or they had begun to think of their shares as captive capital. No organized and effective opposition effort emerged to challenge the board of directors' and company officials' assertions about the necessity for conversion. Finally, advocates of conversion made effective use of reprivatization and equity liquidity and equity access discourses.

Analysis of the discourse of conversion indicated that expert discourses of equity liquidity and equity access as well as the reprivatization by economism discourses dominated the conversation about conversion. The populist-voluntarist and the social materialist arguments did not seem to have much influence or effect at all except among those who were already critical of conversion and perhaps among some Farmers Union members. Through newspaper articles and in public meetings, only a few members attempted to challenge the rationale, the economic assumptions, or the probable consequences of conversion.

Opponents of conversion began their campaign with a number of structural and tactical disadvantages. First, they argued from a weak vantage point because all they could do was to ask the board of directors or the officers of the company to substantiate their claims and predictions. Secondly, they never had the resources to develop a critique of the board of director's or the officer's assertions or claims about conversion. Finally, they were a small minority with no legal recourse or standing within the bylaws to challenge the board of directors.

A few recommendations are offered as a means to provide more opportunities for opponents to challenge or to pre-empt conversions. First, in the event that the board of directors of a cooperative should begin to believe that the company would be better off as a corporation, it

should be required to contract with an independent party to assist it in conducting scenario planning to determine whether the outcome of conversion is beneficial both to the members and to the cooperative. Second, cooperative bylaws should be changed so that a minority of the members can call for a third party performance audit and review of management practices in the cooperative. Third, when exempted, non-secured delivery shares in the cooperative are converted to secured, speculative shares in a C-Corp., they should be subject to a penalty in recognition that the equity raised in a cooperative for one purpose has been converted in a corporation to another purpose. Finally, upon conversion, the company should be required to repay any public funds that were used to promote cooperative development.

## Introduction

By a surprisingly large margin, the members of Dakota Growers Pasta Company, one of the widely heralded successes in new generation cooperatives, voted in late May 2002 to change the status of the company from a cooperative to a corporation. Out of 1,115 votes cast, 83 percent voted in favor of the change. That the vote was so overwhelming in favor of conversion was a shock to most cooperative observers in the state.

Organized as a new generation cooperative in 1990, incorporated in 1991, becoming operational in 1994, and expanding in 1996, 1997 and 1998, Dakota Growers Pasta Company had become the third largest producer of pasta in the United States by 1998. Many economists and sociologists had been studying the cooperative extensively, it had been widely heralded as an example of a successful new generation cooperative (Bielik, 1999; Trechter et al., 2001; Zueli et al., 1998; Boland and Martin, 2001; Boland et al., 2002; O'Connor, 2001), and had been held up as a model for other similar ventures to emulate.

The debate about the merits of conversion occurred in private and in public. The private debate surrounding conversion occurred among members and between members and the board of directors in closed meetings. The board of directors presented its official position in the filing with the Securities and Exchange Commission (SEC). The public debate on the issue of conversion occurred through newspaper articles, letters to the editor, and editorials. Through these articles, letters, and editorials, a spirited dialogue developed about the virtues of cooperative as opposed to corporate organization as well as the purposes and relevance of cooperatives. The public debate went to the very soul of North Dakota. In a state with a radical agrarian past and where cooperatives have drawn upon a history of populist, anti-corporate rhetoric that the most

successful new generation cooperative would convert to a corporation was unthinkable and unfathomable.

### **Purpose of the Research**

During the interval between the announcement of the board of directors' proposal to convert Dakota Growers Pasta Company from a cooperative to a corporation and the ensuing membership vote on conversion, members of the cooperative were subjected to a variety of discourse venues on the advantages and disadvantages of conversion. Those discourse venues included the Securities Exchange Commission filing, letters to the editor and newspaper articles, and conversations with cooperative members, and shareholder meetings. The intent of this research is to discern the nature and kinds of arguments used by both proponents and opponents of conversion. To accomplish this task will require answering several questions: To what extent did the proponents and opponents draw upon the expert discourse of neoclassical economics to support or oppose cooperative conversion? Did opponents of conversion draw upon oppositional discourse to oppose conversion? How did the proponents of conversion neutralize the arguments of those opposing conversion? Which of the discourses was more effective in convincing members to vote for conversion?

### **Discourse Analysis**

The work of Nancy Frazer (1989) is used to analyze the discourse of conversion. Her conception of discourse is built upon the shifting boundaries between the economic, political and domestic spheres of life, and the three kinds of needs discourse in late capitalist societies. According to Frazer, in late capitalist societies the discussion about what people need has become an arena for the making and contesting of political claims such that needs talk has been institutionalized as a major focus of political discourse. Needs talk occurs when groups with uneven

access to discursive resources compete to establish their respective interpretations of legitimate social need as the dominant interpretation (Frazer, 1989: 166). Dominant groups communicate needs' interpretations that reject, neutralize or co-opt counter-interpretations, while subordinate groups communicate needs interpretations that confront, dislodge or adjust dominant ones.

Capitalist economic institutions depoliticize matters by economizing them, thereby converting them into impersonal market concerns, as private ownership matters, or as technical problems for managers and professionals.

Frazer (1989) proposed a scheme to classify the many kinds of needs discourses in late capitalist societies. She suggests that there are three major kinds of needs discourse: Expert, oppositional, and reprivatization. Expert discourse is discussed first because it is the discourse presented by the proponents of cooperative conversion. This discourse includes both legal and social sciences subdiscourses. Within the social science discourse of neoclassical economics are included the equity liquidity, equity access, and cost of equity motives for cooperative conversion. Oppositional discourse arises among opponents to cooperative conversion. Included in this discourse are the voluntarist-populist and social materialist metaphors. Finally, reprivatization discourse arises in response to the oppositional discourse. Included in the reprivatization discourse are the subdiscourses of depoliticization and economism.

### *Expert Discourse*

Capitalist economic institutions depoliticize matters by treating them as technical problems to be solved by managers and professionals. By considering economic problems as beyond the understanding of novices and as capable of being only fully understood by experts, capitalist economic institutions attempt to remove these problems from the realm of public discourse and relegate them to the realm of professionals, e.g. scientists and academics.

Expert discourses are closely associated with the institutions of knowledge production and utilization. Most relevant to this discussion are university academic departments and research think tanks (Frazer, 1989: 174). Occasionally, expert discourses are distributed to a wider audience, including participants in oppositional social movements who attempt to co-opt or create critical, oppositional discourses that are distributed within their own audiences as well as back to the expert discourse audiences. Thus, the boundaries between discourse audiences become rather permeable with discourses being exchanged across expert and oppositional audiences. As oppositional and expert audiences respond to the politicized needs contained in their respective discourses, the result of that response – usually in the form of policy or law -- is transferred to the administrative state for implementation into procedures and tasks. Through administrative discourse, politicized needs becomes de-contextualized from its original oppositional and expert discourses and becoming re-contextualized in abstract, administrative terms, shorn of their political meanings and of their original locations, and recast in terms that privilege dominant institutions and groups. The net effect of converting expert needs discourse into administrative rhetoric is depoliticizing (Frazer,1989: 174). These administrative discourses convert persons into rational utility-maximizing individuals shorn of agency.

### **Expert Discourse and Cooperative Conversion**

Within the expert discourse analysis, the explanations offered by neo-classical economists for conversion include equity liquidity motive (Schrader, 1989) and the equity access, corporate acquisition, and cost of equity motives (Collins, 1991a, 1991b).

Equity Liquidity Motive. According to Schrader (1989), the more successful a cooperative, the greater is the incentive to convert it into an investor-owned firm. Success for Schrader is defined as an increase in the market value of the cooperative in relation to its book value.

When this discrepancy between book and market value occurs, members face what he calls the cooperator's dilemma: "a cooperative that produces net earnings in excess of the opportunity cost of equity capital may be worth more to investors as an ordinary corporation than it is to many cooperative patrons" (1989: 44). According to the cooperator's dilemma, members have an incentive to convert a cooperative to an investment-oriented firm when their investment in the cooperative as a typical business exceeds the value of their participation in it as a cooperative, especially if they have limited time horizons. For Schrader the liquidity liquidation motive for conversion occurs when the market value of members' equity is greater than the book value of their equity.

Equity Access -- Corporate Acquisition -- Cost of Equity Motives. The equity access motive refers to the situation when cooperatives gain greater access to capital by selling stock to the general public. This typically occurs when growth-oriented managers face a membership reluctant to borrow money or to provide enough equity capital to make expansion possible (Collins, 1991b). The corporate acquisition motive refers to the situation where the market value of a cooperative is high and different parties desire to purchase parts of the business as stock or buy the entire business. The cost of equity motive refers to the situation when the demand for the business is high which results in access to greater amounts of capital and a lower cost of capital by selling stock.

### ***Oppositional Discourse***

Oppositional discourse forms emerge when subordinate groups politicize runaway needs by communicating needs interpretations that confront, dislodge, or adjust the dominant need interpretations. These groups contest their status and the predefined need interpretations assigned to or held by them (Frazer, 1989: 171). When subordinate groups challenge these heretofore

depoliticized needs, they accomplish several things at the same time. First, they challenge the fixed boundaries separating “politics” from “economics” and “domestic” spheres. Second, they provide different explanations of their needs located in different chains of in-order-to relations. Third, they construct new discourse audiences to distribute their explanations of their needs. Fourth, they contest, adapt, or dislodge dominant components of the means of interpretation and communication or create new types of discourse to interpret their needs.

Oppositional Discourse and Cooperative Conversion. Historically, the cooperative movement has had an oppositional character (Mooney and Majka, 1995). The restriction in eligibility for membership in a cooperative most clearly reflects this oppositional character (Crampton, 1965: 11). Only farmers or those who had a real interest in a rural community’s welfare, such as laborers and certain members of the professional classes, were permitted to join. Excluded were members of the commercial or financial elite such as bankers, merchants, lawyers, or speculators in agricultural products. This exclusion found support in the Midwest and Great Plains where farmers had long been suspicious of banks, railroads, speculators, middlemen, and monopoly capital. Two oppositional discourses, which may be used in the discourse analysis of conversion include the social materialist metaphor and the populist-voluntarist metaphor. The development of the following sections on these critical constructs originate in “*Rhetorical Constructions and Cooperative Conversions: A Comment*” by Gray and Mooney (1998).

Populist-Voluntarist Metaphor. In the populist-voluntarist metaphor, the individual is the focus, but as a political person and as a voluntary member of an organization (Gray and Mooney, 1998). Within this metaphor, the organization is subordinate to the collective needs of its members. As applied to cooperatives, this metaphor sees them as existing to serve the needs of their member-users, sees its users as owners, sees cooperatives benefiting the user-owners

proportional to their use, and sees cooperatives being governed democratically on a one-person-one-vote basis. These conceptions are in direct contradiction to the neo-classical economics conception of the investor-owned firm.

Several researchers writing from the populist-voluntarist metaphor see conversion as a counterfactual loss (Lasley et al., 1997; Craig, 1980; Baarda, 1986). For them, conversion is seen as a loss of power, influence and democracy; as centralizing power into fewer hands; as the weakening of local ties; and as placing control in the hands of absentee, non-local interests (Gray and Mooney, 1998). After conversion, they would view the organization as no longer being based on patronage but on turn-over of capital and return on investment; and as no longer being focused on empowering members but on narrower monetary concerns (Gray and Mooney, 1998).

Social Materialist Metaphor. Class relations, power, and organization are central to the social materialist metaphor. Whereas the neo-classical economics metaphor views ideas, values, and preferences as causing the formation of markets and society, the social materialist metaphor views class relations and material production as the causal force (Mooney, 1988,1990; Bonanno, 1987; Archer, 1978). Class, rather than individuals, is important in this metaphor, and it views class as a relationship rather than a category (Gray and Mooney, 1998). This metaphor sees cooperatives as being rooted in the class practices of farmers. They arose to provide a service where none existed, or to provide a means of countervailing power against monopolies that extracted surplus value from farmers through the provision of inputs or the marketing of production. In this metaphor, cooperative conversion results in the permanent loss of this instrument of class practice which later agrarian social movements would not be able to resurrect.

The social materialist metaphor views cooperatives as a class practice, and it views them as acting in the class interests of their members. Neo-classical economics discourse, however,

focuses on making farmers, as individuals, or the cooperative, as a business, more efficient. In this metaphor, cooperative conversion would not be considered as an alternative. It would more likely be seen as another societal force disempowering family farmers as a collective class (Gray and Mooney, 1998).

### ***Reprivatization Discourse***

Dominant social institutions resist the politicized needs in oppositional discourse by defending existing boundaries separating “political,” “economic,” and “domestic” (Frazer, 1989: 172). They use reprivatization discourses to depoliticize oppositional discourse by separating the economic from the political. . Through oppositional discourse subordinate groups communicate needs interpretations that reject, neutralize or co-opt dominant interpretations. Reprivatization discourses depoliticize concerns by treating them as if they were naturally economic concerns. Typically capitalist economic institutions depoliticize matters by economizing them, by considering them as impersonal market concerns or as private ownership matters. Reprivatization discourse draws heavily upon the rhetoric of neoclassical economics that attempts to restore the boundary between the economic and the rest of society (Block, 1990: 26). The rhetoric of neoclassical economics tends to “naturalize” the economy, i.e. to treat economic arrangements (such as cooperatives or corporations) that have a historically specific context, as the universal outcome of the need to conserve scarce economic resources (Block, 1990: 26). The two reprivatization discourses considered here include reprivatization by depoliticization and reprivatization by economism.

***Reprivatization by Depoliticization.*** Discursively, reprivatization refers to efforts to challenge the emergence of oppositional concerns by depoliticizing them. Although reprivatization discourse arises in response to oppositional discourse, it incorporates those oppositional dis-

courses while rejecting them. Simultaneously, reprivatization discourse attempts to make explicit those well-established and dominant interpretations that had remained unspoken prior to the emergence of oppositional discourse. While denying the demands of opposition discourse agents for the recognition of the legitimacy of their needs, reprivatization discourses further politicizes those needs by increasing their universality as arenas for conflict. Consequently, these discourses further mobilize opposition movements while reforming their identities.

***Reprivatization by Economism.*** Neo-classical economics discourse is based on the idea of methodological individualism and the notion of the rational individual. Within this metaphor, economic exchange is regarded as the only relevant relationship among individuals. Other explanations for human relationships -- such as tradition, power, emotion, and culture -- are lost in this metaphor (Klamer, 1987; Mooney et al., 1996). When applied to cooperatives, this metaphor sees cooperative members as being economically rational and motivated principally by economic concerns (Collins, 1991; Schrader, 1989). According to this perspective, members view cooperatives as a source of their incomes, and they continue to participate and invest in cooperatives only as long as benefits received are greater than benefits foregone (Schrader, 1989). Similarly, the member is seen as an investor, they join a cooperative for economic reasons, they view the cooperative as being similar to an investor-owned firm, and they can seek a higher return on their capital by redeploying it elsewhere through liquidation, sale, or conversion.

***Reprivatization Discourse and Cooperative Conversion.*** Economic arguments provide the rationale for cooperative conversion in reprivatization discourse. Neo-classical economics' focus on individuals' values and preferences sees cooperatives only as aggregations of individuals (Phillips, 1953, 1994) or sees them as a business that is no different from any other businesses (Helmberger and Hoos, 1962, 1995). Reprivatization discourse challenges both the oppositional

discourse of cooperatives and the idea of cooperation as a social relationship that is relatively independent of purely private forms of capital investment, production, and circulation (Mooney, et al. 1996: 561). This relative independence of cooperatives as a social relationship is related to their opposition to the radical separation of the economic from the political and domestic spheres characteristic the rhetoric of neoclassical economics. As well as depoliticizing cooperative conversion, neoclassical economics also eliminates the domestic sphere from the interpretation of needs (Mooney, et al., 1996: 561). It sees patronage refunds as the interests of individual cooperative members. Cooperative members are viewed only as a collection of individuals but not as members of families, communities, social groups, or occupational groups.

### **Methodology**

The intent of this research is to discern the nature and kinds of arguments used by both proponents and opponents of conversion. Several research questions are involved in this analysis: To what extent did the proponents and opponents draw upon the expert discourse of neoclassical economics to support or oppose cooperative conversion? Did opponents of conversion make use of oppositional discourse to oppose conversion? How did the proponents of conversion neutralize the arguments of those opposing conversion? Which of the discourses were more effective in convincing members to vote for conversion?

In the literature review, three discourses and several subdiscourses were identified. Expert discourses include the equity liquidity, equity access, corporate acquisition, and cost of equity motives. Oppositional discourses include populist-voluntarist and social-materialist metaphors. Reprivatization discourse includes subdiscourses of depoliticization and economism. These discourses are used as ideal types to guide inquiry and data collection. Ideal types can also be used as heuristic constructs that represent a parameter, model or archetype. The ideal

type is a category and a construct for understanding. An ideal type is more than a technical tool; it can also represent cultural ideas. The purpose of ideal types is to construct a meaningful ordering out of the chaos of empirical reality. To realize this, ideal types can serve as heuristic devices to represent the dominant unique values or ideas of a particular society. Using ideal types as heuristic devices, one can discover the significance of the specific cultural value-ideas. For the purpose of this paper discourse types as ideal types will be used to analyze various discourses venues. These venues include the textual data in the documents filed with the Securities Exchange Commission by Dakota Growers Pasta Co.; transcripts of interviews with cooperative members and knowledgeable; and analysis of newspaper accounts, letters to the editor, and opinion pieces in the state's major daily newspapers.

In order to answer these questions, the expert, oppositional, and reprivatization discourses provided the ideal-typical, deductive categories that will be used to code the data. The process by which a researcher determines what is of interest, identifies it, and places it into appropriate categories is known as coding. Deductive coding begins with the research question, using concepts to code the data, and examining words, phrases and descriptions in the data to detect themes (Seidman, 1998: 107). Inductive coding also will be used in this analysis to recognize themes that emerged from within the data that had been deductively coded into predetermined categories based upon the ideal typical discourse concepts.

## **Data**

**Interviews With Cooperative Members and Cooperative Knowledgeables.** Lists of possible candidates to interview were compiled using a snowball process. This process involved several steps. First, a list of names of members who had taken a public stand in the media about conversion was compiled. Second, cooperative knowledgeable were asked to suggest persons

to interview. Third, a list of influential members of the cooperative community was assembled. Fourth, interviews with members of the board of directors as well as the chief executive officer and chief financial officer of the cooperative were requested. Through this process, a list of 49 persons was identified. A letter of initial contact was sent to each person informing him or her of the purpose of the project, requesting their participation, and guaranteeing their confidentiality. If they did not respond within a month, they were contacted with a follow-up letter or a phone call. Unfortunately, many of those who were initially publicly supportive of conversion declined to be interviewed, and the chief executive officer of the cooperative sent a letter on behalf of all board members declining interviews. As a result, only 38 persons were in the pool to be interviewed. Of the 38, four refused to be interviewed, seven did not respond to either the letter or telephone call. In-person or telephone interviews were completed with 26, with 20 opposed to conversion and six in favor of it. All interviews were recorded and transcribed into a word processing file for analysis

**Filing with the Securities and Exchange Commission.** The textual data from the Dakota Growers Pasta Company filings with the Securities and Exchange Commission are available online at the SEC website. The text for *Questions and Answers*, *Reasons for Conversion*, and *Risk Factors* were downloaded to a word processing file. (See Data References)

**Newspaper Accounts, Editorials and Op-Ed Articles.** A search was conducted of the online indexes of the three major daily newspapers (*Fargo Forum*, *Grand Forks Herald*, and *Bismarck Tribune*) as well as the two major agricultural weeklies (*AgWeek* and *Farm and Ranch Guide*) for the time period beginning in January 2002 and ending after the members voted for conversion in April 2002. That search included any articles, letters to the editor, editorials, or op-ed pieces dealing with the conversion of Dakota Growers Pasta Company. Also included were

articles that appeared in the *Union Farmer*, the North Dakota Farmers Union newspaper. Initially 19 articles were identified, but four were discarded because they appeared after the vote on conversion leaving a total of 15 articles for analysis. Some of the articles appeared in more than one daily newspaper or agricultural weekly. The articles were downloaded into a word processing file. (See Data References)

### **Analysis**

The textual data from the three discourse formats -- the Dakota Growers Pasta Company filings with the Securities and Exchange Commission; news articles, editorials, and letters to the editor in the three major daily newspapers and agricultural weeklies; and transcripts of interviews with twenty five cooperative members and cooperative knowledgeable -- were placed in a word processing file. After several readings of each text file, key words, phrases, or themes were identified in the text that corresponded to the various ideal-typical discourses. Simultaneously, other concepts or themes that might emerge from reading of the data were inductively identified.

After several readings of the texts, segments were identified that could be associated with the ideal-typical discourses as well as new ideal type discourses that emerged from the reading. Then a block and move procedure within the word processing program was used to lift segments from the documents and to place them within text files associated with each ideal typical discourse. Within each discourse format, the text was further analyzed for refinements and elaborations on the ideal typical discourses. For instance, themes arose from the reading of the text within a discourse or sub-discourse. These themes were identified and were used as a sub-grouping for further analysis within the discourses or sub-discourses. Each discourse format was analyzed independently of the other discourse formats. After identifying textual data that repre-

sented the various discourses and sub-discourses in each discourse format, the analysis of like discourses or sub-discourses were merged into a common file, and the themes within each discourse or sub-discourse were used to group like themes from the discourse formats.

## **Report Format**

The format of the remainder of the report begins with a review of weather and disease problems as they established the context in which conversion occurred. That is followed with the case for conversion made by its proponents. That case is based upon equity liquidity and equity access motives buttressed by the expert-legal discourse concerns about remaining a cooperative vs. converting to a corporation. After the case for conversion, the case against conversion offered by its opponents follows. That case is based upon the populist-voluntarist and social materialist metaphors. The reprivatization discourses of economism and depoliticization follow last. The reprivatization by economism discourse features the response of members to both the weather-disease context as well as to the equity liquidity and equity access motives. The reprivatization by depoliticization discourse features the response by the board of directors and officers of the company to the criticisms by opponents. The report concludes with a summary and implications.

## **Weather, Disease, Delivery Problems**

One discourse that emerged from reading of the text in the three discourse formats concerned the extent to which weather conditions had affected the ability of members to raise and deliver durum as required by their members' agreement. A variety of themes emerged from a reading of the three discourse formats. First, members were having difficulties in raising durum because of *fusarium* head blight. Second, the cooperative had trouble in acquiring quality durum. Third, because weather and disease conditions had severed the relationship between pro-

duction and delivery, the cooperative had to purchase durum in members' names from the durum pool. Fourth, because so few producers were able to raise durum, the cooperative found it increasingly difficult and expensive to procure durum. Fifth, the board of directors advocated conversion as way to solve the problems for both producers and the cooperative.

In the mid-to-late 1990s, increased rainfall and humidity had raised the level of infestation of durum wheat by *fusarium* head blight, commonly known as scab. The infestation affected the area of north central North Dakota known as the Durum Triangle noted for its high level of production of durum wheat. Scab is a fungus disease that is most often seen on spring wheat, durum and barley in North Dakota (McMullen and Stack, 1999). It reduces durum yields due to sterility of the florets and light test weight kernels. Additionally, scab results in discolored kernels, which make it unacceptable for pasta production and in deoxynivalenol or DON (vomitoxin) making it unacceptable for animal consumption.

Because a majority of the members of Dakota Growers Pasta Company resided in areas infested by scab, the production of durum moved westward in the state into areas less humid and not yet infested. Consequently, very few of the members who were durum producers when they joined Dakota Growers Pasta Company were then raising durum. Instead, they opted to let the company purchase durum on their behalf from the durum pool. In recognition that there would be occasions when members for various reasons would not be able to deliver durum as required, the company had established a durum pool from which it could purchase durum on their behalf to fulfill their delivery obligations.

Four news articles mentioned the difficulties that members were having in raising quality durum because of *fusarium* head blight. These articles emphasized several themes. First, some interviewees asserted that conversion was necessary because crop disease had made it difficult

for current members to either raise or deliver durum. Second, others maintained that crop disease had forced many members out of durum production. Third, some alleged that production problems resulting from extreme weather conditions made it difficult for the company to secure quality durum. Fourth, the difficulties members experienced in delivering quality durum had forced the company to resort to purchasing durum through the company's pool.

One of the earliest news articles quoted the SEC filing in which the board of directors stated that conversion was necessary because some current members could not deliver durum. *"In its SEC filing, Dakota Growers says the change is needed because poor weather in eastern and central North Dakota has caused scab disease problems for some current co-op stockholders"*<sup>1</sup> A later news article asserted that *"Many of Dakota Growers' members have been forced out of durum production by crop diseases."*<sup>2</sup> That weather conditions were responsible for the problems the company was having in securing quality durum was asserted in another article. *"Wet and cold conditions in recent years made it impossible for some grower-members to produce the quality of durum needed for the pasta plant that employs 436 people in Carington and New Hope, Minn."*<sup>3</sup> Just a week before the vote on conversion, a member was interviewed who had been having difficulties in delivering quality durum and had to resort to using the pool. *"From 1997 on, (his) durum didn't make the grade. Like others, (he) paid the penny-and-a-half fee and acquired his durum through the pool, or the company's Northern Grains Institute. He said the same has been true for a number of producers, especially in the Red River Valley."*<sup>4</sup>

In newspaper articles, the board of directors constructed a discourse that involved a cause and effect relationship between weather, disease, production, and delivery problems with the logical outcome being conversion. In one news article, the chief financial officer said that the board of directors initiated conversion discussions when members began to raise concerns about

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<sup>1</sup> Newspaper Article #2

<sup>2</sup> Newspaper Article #6

<sup>3</sup> Newspaper Article #10

<sup>4</sup> Newspaper Article #14

their inability to deliver durum as required under their contracts. *“This dates back quite a ways when our members started expressing concerns over being able to raise the quantities and qualities of durum,” said (the) Dakota Growers Pasta chief financial officer.*<sup>5</sup>

With the board of directors having discussed the problems that weather and disease had caused for members and the cooperative, the solution to the problem was revealed. In two news articles the board of directors is quoted as believing that conversion would solve the problem.

*“A series of farm disasters has put the co-op at risk, its board of directors believes, and so they asked the Securities Exchange Commission to approve the change in status. Co-op members will vote on the matter once the SEC approves the filing.”*<sup>6</sup> One news article cited the SEC filing that stated that conversion would eliminate the responsibility of members to deliver durum. *“Also, the move would relieve stockholders of the obligation to deliver durum to the co-op.”*<sup>7</sup>

Interview data confirmed that members were experiencing difficulties in raising durum. Despite their best intentions, wet weather beginning in 1993 combined with high humidity and the appearance of *fusarium* head blight, made it impossible for members to either raise durum or to delivery it to the cooperative. Durum production had shifted to the western part of the state that did not have the problems with disease; however, the majority of members were in the eastern half of the state. Consequently, most members relied on the company to purchase durum on their behalf from the company’s durum pool, and this practice eventually became the norm.

Members recognized that these unfortunate acts of nature became the reality facing them in their relationship to the cooperative and established the context in which the discourse of conversion occurred.

*What was your opinion of those reasons they gave for a conversion? Well, the one that had merit, in my judgment, was the one that said well, you know, we can’t raise durum wheat out here anymore. You know, when I bought into this, I had every intention of raising durum wheat. Dakota Growers was organized in*

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<sup>5</sup> Newspaper Article #10

<sup>6</sup> Newspaper Articles #3 & #4

<sup>7</sup> Newspaper Article #9

*1991-1992, in that era. The excessively wet weather really hit eastern North Dakota in 1993, and it did make some sense to me that those weather patterns changed eastern North Dakota farmers ability to grow high quality durum wheat. To me, that was the one that made the most sense of all.*<sup>8</sup>

In mid to late 1990s, above average rainfall and high humidity, compounded by the appearance of *fusarium* head blight, greatly affected the production of durum. “*I mean this all coincided with a very severe fusarium outbreak in the state. We found out that it was... You know this notion that we could supply durum and they’d take our durum and process it you know wasn’t working. You either couldn’t raise the durum or you didn’t want to raise the durum or you didn’t like the price of the durum or it was too far to haul the durum.*”<sup>9</sup>

Because members could not raise durum, the cooperative had trouble in acquiring quality durum. Competition for quality durum had driven up the price of acquiring durum for the cooperative durum pool, consequently the cooperative found it increasingly difficult and expensive to procure quality durum. The best was in Canada, but competitors had locked it up. “*You know just like we couldn’t produce the durum anymore, the company was starting to struggle with acquiring durum and the fact that some of the competitors were able to source Canadian durum for a longer term, which turned out to be a lower and more stable price where, down here, they were a lot more erratic you know and, as it turned out, a more expensive price.*”<sup>10</sup>

In addition, durum production had shifted to the western part of the state that had not been as affected by severe weather, but the cooperative had few members in that area. Because a majority of the members was in the eastern part of the state, and because members were not raising durum, delivery had become problematic.

*You know I think one of the big factors was the fusarium. Members could not consistently raise the product that the plant needed. They were forced to get most of their durum out in the western part of the state initially and even after a couple of years we started having problems raising it out here, so eastern members who, by the way, I think probably both in numbers and money constituted the majority of the cooperative, just couldn’t produce it. It was a sheer fact of Mother Nature. It was something that no one predicted at*

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<sup>8</sup> Interview Transcript #3

<sup>9</sup> Interview Transcript #20

<sup>10</sup> Interview Transcript #20

*the time and you know was an unfortunate turn of events. It was something no one wanted to see, but was a reality.*<sup>11</sup>

The connection between production, delivery problems and conversion was elaborated in the SEC filing. The board of directors maintained in its filing with the SEC that members' inability to raise durum would require Dakota Growers Pasta Co., if it remained a cooperative, to purchase durum from non-patron sources. Doing this would reduce the cooperative's access to member capital through per-unit retains or patronage equity credits. Additionally, the board of directors maintained that if the cooperative conducted business with non-patrons, that business would be subjected to entity-level taxation just as a corporation would be taxed. Remaining a cooperative subject to entity level taxation, however, would not provide the company with access to outside capital or improved liquidity for its members. Finally, the board of directors intimated that an un-named "*legal authority*" suggested that if the "*cooperative's inputs were obtained from non-patron sources, its tax status as a cooperative would be jeopardized.*"<sup>12</sup>

Data from all three discourse formats confirmed that weather conditions and disease had established the context in which the discourse of conversion would take place. Together these two conditions motivated the board of directors to offer conversion as a solution and for members to vote for it. Excessive rainfall and humidity and the rise of fusarium head blight had created conditions in which members were unable to raise durum as well as to fulfill their requirements to deliver durum to the cooperative, led more and more members to use the durum purchasing pool to fulfill their obligations, and created problems for the cooperative in procuring quality durum.

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<sup>11</sup> Interview Transcript #20

<sup>12</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

## Expert Discourse

### Equity Liquidity Discourse

Interviewees cited equity liquidity as the most convincing argument that prompted members to vote for conversion. Interviewees thought the motivation for pursuing conversion was the high number of members who had retired, or were about to retire, wanting to divest of their shares of stock but not finding willing buyers for them. The centrality of equity liquidity in the discourse of conversion was evident in the SEC filing in which the board of directors maintained that it was responding to members' concerns about the lack of liquidity for their shares. The board of directors asserted in the filing that it had considered all options, but it found that only conversion to a corporation provided the liquidity that members desired. News articles often quoted the filing as their basis for citing liquidity as one of the reasons for the board of directors pursuing conversion. In these articles, the board of directors maintained that by initiating a discussion about conversion, it was just responding to members' concerns about lack of liquidity. Some members, however, were cynical about the board of directors' motives for pursuing conversion or were skeptical that it would necessarily improve liquidity.

Disease and weather-related problems compounded members' concerns about their ability to deliver durum as required by their contract, and they were uncertain that they could ever raise durum again. *"Farmers experienced scab and they tried to raise durum and they could only get a buck a bushel for the darn stuff, so it scared them real bad and they were thinking, well, you know, I'm not going to be able to raise this durum, I don't know when they are ever going to get this problem solved, the scab, so I better get rid of my shares. I need to get away from this thing, but how can I get the best value for my shares."*<sup>13</sup>

Retired farmers could not get out from under the obligation to deliver durum, did not see any possibility that they would be able to raise durum in the near future, and wanted to sell their

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<sup>13</sup> Interview Transcript #1

shares. *“The big selling point of the conversion was that this would be a way for people to get liquidity in their stock. They would be able to sell it because that was a concern to a lot of the more elderly patrons that there was just not much of a market for it or looking like it”*.<sup>14</sup> It was not only retired members, however, who favored greater liquidity. The prevailing position of many members was that because they were unable to raise durum, they wanted to redeem their equity and get out of the company. *“There was some talk of “I want to invest in other things”. “I need to get my money back.” “I’m tired of durum, so I want out.” I think that was the prevailing attitude.”*<sup>15</sup> A majority felt there was no other choice other than conversion if they could neither raise nor deliver durum. *“The first group was the large overwhelming group that voted for the conversion, felt there really wasn’t much of an alternative. We can’t grow the grain. We need to sell our shares eventually because we are not growing the grain.”*<sup>16</sup>

Many thought the motivation for voting for conversion was retiring farmers wanting to divest of their shares of stock. *“That is was more liquidity for the people who were probably wanting to get out. There are a lot of people who have bought shares now who are 65 or 70 years old, and I think they would like to get their money out. When it first started, there were a lot of farmers who were 55 and 60 who were buying shares. Well, now they are close to 70 years old and some of them are older than that and I think they want to get their money out.”*<sup>17</sup> One member recalled how at meetings to explain conversion, the board of directors capitalized on the desire of retired members to sell their stock

*One, was the issue of liquidity of shares. They played on the emotions of, particularly, the older shareholders, saying right now there was very little chance for you to sell your shares to someone else unless you give them to a son or somebody was taking over your farm. There weren’t any shares moving on the open market and since you had to be a farmer, it made the eligible shareholder tool very small. Of course, some of those people were getting up in age and they were concerned about getting their investment back and that was very attractive.*<sup>18</sup>

An interview with a member who favored conversion indicated that many retired farmers were holding stock, unable to deliver durum, and unable to sell their shares.

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<sup>14</sup> Interview Transcript #15

<sup>15</sup> Interview Transcript #1

<sup>16</sup> Interview Transcript #1

<sup>17</sup> Interview Transcript #18

<sup>18</sup> Interview Transcript #9

*Herman said he' s in favor of the corporate shift because in a co-op the stock is supposed to be owned by active farmers. In a corporation, retired farmers or anyone else will be able to own the stock. Farmers who are in the co-op bought the stock when they were in their 50s and 60s are now in their 60s and 70s. Herman said the corporate form likely will allow members who want to liquidate just part of their investment to do it more easily. "To me, it would be beneficial if a lot of people around the state could invest in it if they wanted to - farmer or not."*<sup>19</sup>

The centrality of equity liquidity in the discourse of conversion was also evident in news articles. A letter to the editor from a board member emphasized that the desire of members to retire from farming, to liquidate their stock, and to realize gains in the value of their stock were major reasons for pursuing conversion. *"However, the business circumstances for Dakota Growers have changed over the past 10 years. Now, we find ourselves with members wanting to retire from farming and capture some of the value they have built up in the enterprise."*<sup>20</sup> In one news article, the CFO said that as members approached retirement age, they began complaining that they could not find willing buyers for their shares of stock. *"In addition, some members of the co-op that invested in 1992 have approached retirement age and want to sell their stock. "They are finding liquidity an issue because there's not many people buying or available to buy because there are fewer people raising durum because of the weather conditions and economics," said Friezen."*<sup>21</sup> According to the CFO, these complaints prompted the board of directors to pursue ways to increase liquidity of shares. *"We've talked to a lot of members and investigated a lot of opportunities, and there are enough members interested in trying to create better liquidity than exists out there now," said Friezen."*<sup>22</sup>

Additionally, the SEC filing placed liquidity at the center of the discourse on conversion. In the SEC filing, the board of directors supported its assertion that it considered conversion only in response to members' concerns about the lack of liquidity of their shares of stock. *"(a)n indeterminate number of members (albeit it a sufficiently large number to justify serious consideration by the Board of Directors) of the cooperative, the Board of Directors of the North Dakota cooperative discussed the desirability of*

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<sup>19</sup> Newspaper Article #14

<sup>20</sup> Newspaper Article #11

<sup>21</sup> Newspaper Article #10

<sup>22</sup> Newspaper Article #10

creating a more liquid market for the cooperative's securities".<sup>23</sup> Similarly, another statement made the same claim: "With a not insignificant portion of the membership of the cooperative continuing to express concern about liquidity and durum wheat production, the Board of Directors of the cooperative further internally discussed possible solutions."<sup>24</sup>

Those interviewed mentioned equity liquidity most often as the most convincing argument that prompted members to vote for conversion. "You know, the liquidity issue... I keep coming back to that because I think that was a huge issue. I think it got some people and probably just enough people to think, okay I don't like the idea, but I don't raise durum and if I can get rid of my shares, I'll vote for it and then I'm done with it. I think that's how they swayed the vote."<sup>25</sup> That current or potential members would buy these shares did not seem like an option as many of the current shareholders were themselves not raising durum and likely purchasers who were not members did not have the equity to purchase these shares. "I can remember sitting in that meeting listening to some of the people get up and talk about the fact that they were retiring or knew they were going to retire shortly and had no idea where these shares were going to go and had no interest in maintaining these shares because they were leaving the farm and they felt this was one opportunity for them then to move their shares."<sup>26</sup>

In addition, some members who were not ready to retire, but could not raise durum and wanted to redeem their equity so they could invest it in other ventures. "So, the equity redemption was a major feature in their conversion" "Yep. Yep. Able to get your money out of this and I remember that there was a lot of talk about those folks, I think it was Roger Kenner at that point, who was also saying you know we're not raising much durum anymore, so we'd like to get our money out of this and invest it somewhere else."<sup>27</sup> Liquidity became the major topic of discussion at shareholder meetings. Members had already decided that they wanted to divest themselves of their shares. "The biggest thing they discussed at that

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<sup>23</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

<sup>24</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

<sup>25</sup> Interview Transcript #6

<sup>26</sup> Interview Transcript #6

<sup>27</sup> Interview Transcript #6

*meeting was liquidity and people just had their mind made up, a lot of them, that they wanted to sell their shares or have that opportunity and this would be better to do that.”*<sup>28</sup>

An early news article cited as a precursor to conversion previous board of directors attempts to improve liquidity by expanding membership into Canada: *“Dakota Growers members voted a year ago to explore the idea of Canadian stock ownership and sourcing of durum. The prime reason was the same as for the latest move - to increase the number of people eligible to purchase stock and therefore improve the company's share liquidity, its ability to sell stock as an asset . . . .”*<sup>29</sup> Another news article quoted the SEC filing in which the board of directors stated that conversion *“enhances . . . . .the liquidity of the corporation's capital stock”*.<sup>30</sup> The op-ed article by the directors of the cooperative center quoted as among the reasons for conversion as *“ . . . .to increase liquidity of current equity stock . . . . . by increasing the pool of potential investors beyond the farmers capable of producing durum.”*<sup>31</sup> Another news article quoted the SEC filing as stating that conversion would provide more liquidity: *“According to the SEC filing, converting to a corporation could provide more liquidity of current stock equity and attract new capital.”*<sup>32</sup> Not only would conversion improve liquidity, but it would also enhance opportunities for joint ventures according to the SEC filing. *“The filing says the change would enhance the possibility of relationships with strategic partners and improve the liquidity of the corporation's capital stock.”*<sup>33</sup> Thus, the only feasible option seemed to be to vote for conversion with the hope that non-producers would purchase their shares of stock. *“They've had two or three quarters of losses and then, of course, through the conversion the stock would become more liquid.”*<sup>34</sup>

In the filing, the board of directors addressed the issue of liquidity probably more so than it does any other issue. Equity liquidity was mentioned numerous times, and conversion was of-

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<sup>28</sup> Interview Transcript #15

<sup>29</sup> Newspaper Article #1

<sup>30</sup> Newspaper Article #6

<sup>31</sup> Newspaper Article #7

<sup>32</sup> Newspaper Article #9

<sup>33</sup> Newspaper Article #3

<sup>34</sup> Interview Transcript #7

ferred as the only feasible means to provide the liquidity that the board of directors asserted the members desire. In the filing, the board of directors claimed that many members requested greater opportunities to sell their equity investment in the company because they were not able to raise durum because of weather and disease problems. As members of the cooperative, they could only sell their shares to existing or prospective cooperative members. Upon conversion to a corporation, however, the board of directors asserted that members would have greater opportunity (more liquidity) to sell their shares to an enlarged set of prospective buyers.

While the board of directors asserted that the only possible solution to the problem of liquidity was conversion to a corporation, it had also considered other options continuing to operate as a cooperative, converting to a limited liability company (LLC), or converting the milling operations to a limited liability company and converting the pasta operations to a corporation. In all instances, the board of directors claimed that conversion to a corporation was superior to all the others in providing the kind of liquidity that members desired.

The board of directors provided its rationale in the SEC filing concerning continuing to operate as a cooperative. “*While the Board of Directors discussed alternative wheat delivery systems within the cooperative, continuing to operate as a cooperative would not provide the liquidity to members or access to the public debt and equity markets that the cooperative may need to grow its business*”<sup>35</sup>. Similarly, about converting to an LLC, the board of directors also stated, “*The Board of Directors considered converting the cooperative to a limited liability company, but believed that that the tax consequences of such a transaction were too adverse to justify the conversion*”.<sup>36</sup> According to the filing, under tax law such a conversion would be considered a liquidation and a re-contribution of assets to the new company. The company would have to pay capital gains on the appreciated value of the assets, and members would also

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<sup>35</sup> Interview Transcript #16

<sup>36</sup> Interview Transcript #16

have to pay taxes on the fair market value of any assets received in the deemed liquidity. The board of directors concluded that the tax on capital for the cooperative if it adopted this option would be \$10 million, and it further concluded that a LLC *“would not provide as much opportunity for equity liquidity or access to capital as is possible with a corporate entity.”*<sup>37</sup> The board of directors also considered converting the company’s pasta operations to a corporation and spinning off the company’s milling operations into a LLC. They concluded, however, that this was not a feasible alternative because of the lack of integration between the two operations as well as the *“negative impact on access to capital and liquidity of not being a fully integrated operation”*.<sup>38</sup>

Thus, having dismissed all other options to improving liquidity, the board of directors went on to state that conversion to a corporation was the only viable alternative. The board of directors contended that equity liquidity was enhanced with a corporate form of organization because it expanded the number of potential equity holders beyond agricultural producers, whereas the cooperative form limited membership to agricultural producers and producer associations. *“While no assurances can be given, the liquidity of members’ equity interests may be enhanced if ownership in the new North Dakota corporation is opened up to a broader ranges of investors including non-producers”*.<sup>39</sup> Another statement in the filing reinforced the above comment by stating that the board of directors believed that a corporation would enhance the liquidity of members’ investments because of an expanded pool of potential equity holders which would include non-producers,

Not all members were convinced that conversion would necessarily improve liquidity. One news article referenced a critic who asked whether any research had been conducted to indicate that conversion would improve liquidity. *“What research do you have that shows us that the stock*

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<sup>37</sup> Interview Transcript #16

<sup>38</sup> Interview Transcript #16

<sup>39</sup> Interview Transcript #16

would have improved liquidity as a corporation?”<sup>40</sup> Rather than questioning the necessity for conversion, other members questioned how the procedures whereby a market in shares would be developed.

*Other questions arise as to the handling of stock if a change in business structure should occur, such as, how will shares be sold if we change to a corporation? Through whom will shares be sold and how soon after the vote? Will DGP issue new shares and hold an offering, or will current members have a priority, or will current members have a priority in selling their shares? Will share be sold on a prorated basis if there are more shares for sale than there is demand? In what manner will DGP stockholders have transparency as to the numbers of shares being sold and the price?<sup>41</sup>*

Some members were more cynical in their assessment of the board of directors’ motives for conversion. They thought that the board of directors had used liquidity as the main reason to encourage members to vote in favor of conversion.

*Well, I’ve got a neighbor I visit with about this once in a while and he suspects what’s happen and he’s afraid of what’s happening, but he suspects a lot of these estates and people who have to get off and want to get off desperately are just going back to the board I want to sell, you know, will the company buy them back. Well, here’s a perfect opportunity for the board members or any insiders, board or management, to say well, we can’t do it as a company, but we can make you an offer privately if you want (uh-huh). You can image how fast they can acquire additional control on that. It would certainly be interesting to see what has happened in the history of those kinds of trades (yeah). If anything has.<sup>42</sup>*

A few hypothesized that the board of directors’ motivation for pursuing conversion was that a major corporation was interested in acquiring significant shares of stock in the company.

*I don’t know if it was ever said, but I think there were some feelings that somewhere out there that there was a major corporation that was going to buy the thing and that they would at least be able to get their initial investment back out of it. Again, they were going to use the liquidity argument if the thing wasn’t making any money no one would be very interested in buying it. But, I think in back of most people’s minds that there was a major corporation that was interested in buying it and that was a way of at least getting their initial investment back.<sup>43</sup>*

From the interviews, the news articles, and the SEC filing, the discourse of liquidity was couched in the neoclassical economics expert discourse of equity liquidity as well as expert legal discourse about the tax consequences of various alternatives. By discussing the consequences for liquidity of alternative economic arrangements, the board of directors dismissed all of them

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<sup>40</sup> Newspaper Article #9

<sup>41</sup> Newspaper Article #9

<sup>42</sup> Interview Transcript #9

<sup>43</sup> Interview Transcript #25

except for corporate conversion. Although the neoclassical economics discourse of equity liquidation is somewhat obtuse, and even more so when explained in terms of tax consequences of alternative forms of business organization, it served as a bridge discourse between the experts in tax law and neoclassical economics and members with the board of directors acting as an intermediary. Upon expressing their desires to redeem their equity (an in-order-to discourse), the board of directors responded with procedures for translating these politicized needs into administrative needs. By resolving the “in-order-to” needs of the members, the board of directors also resolved perceived needs of the company in regards to equity access.

### **Equity Access Discourse**

After equity liquidity, the expert discourse of equity access was noted most often as one of the more persuasive arguments used to convince members to vote for conversion. Throughout the three discourse formats, the necessity of securing greater access to equity capital was discussed. An explicit case was made for expansion of the company that was used to justify the need for further access to equity. The disadvantages of remaining a cooperative about equity access were reviewed. The advantages of converting to a corporation were presented, and alternatives to remaining a cooperative were discussed. Converting to a corporation was presented as the alternative that would provide more equity access. The advantages of converting to a corporation, the disadvantages of cooperatives, and the comparison of cooperatives to other forms of organization, were all couched in the equity access motive of neoclassical economics.

Implicit in the equity access discourse was the unquestioned assumption of continued growth of the company. Because the company had already gone through a series of expansions, many members assumed that expansion would continue. In the SEC filing, the discourse of expansion was made explicit by establishing the company’s need for access to capital. It argued

that in the next several years, competition within the pasta industry, price sensitivity for pasta, durum, semolina, and by-products, and the company's debt service requirements would require major capital resources to maintain existing activities.

Although a quote in the SEC filing noted that the company would need additional capital for maintenance, a key phrase in the quote indicated that the board of directors anticipated the possibility of growth through expansion or acquisition that would not be possible without access to more capital than its members could supply. For instance, the board of directors asserted that a corporation would provide more access to capital "*to grow its business*" because there were more financial institutions and investors which served corporations compared to the limited number of institutions and investors which served cooperatives. Furthermore, the board of directors asserted that growth in the company would occur through several routes: "*Growth in the North Dakota corporation's business as a result of any increased levels of capital would likely arise through, among other things, strategic acquisitions, market expansions, equipment acquisitions, cost-saving measures and efficiencies.*"<sup>44</sup>

The assumption of continued growth of the company was continued in newspaper accounts. Throughout the accounts, growth of the company was taken as a given. Three news articles, one op ed, and one editorial all suggested that conversion would secure additional capital to permit growth, capitalize on new opportunities, and enhance possibilities of strategic partnerships. An editorial reinforced the idea that if the company was to grow it needed a better method of raising equity: "*The cooperative also lacks a reliable way of getting enough capital to expand and grow.*"<sup>45</sup> An early news article cited the SEC filing in which the board of directors contended that conversion would allow them to form partnerships as well as improve liquidity. "*It also enhances the pos-*

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<sup>44</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

<sup>45</sup> Newspaper Article #8

sibility of relationships with strategic partners and the liquidity of the corporation's capital stock”<sup>46</sup> The op-ed article by the directors of the cooperative center cited as among the reasons for conversion that expanding the pool of investors would increase liquidity and generate new capital for expansion. “The stated reasons for the conversion are . . . . . to increase the potential for generating new equity for continued business growth. Both objectives are to be achieved by increasing the pool of potential investors beyond the farmers capable of producing durum.”<sup>47</sup>

An interview with a proponent of conversion in a major weekly just before the election emphasized that as a corporation the company would be better able to grow. “A corporate structure might put Dakota Growers in a better position to capitalize on opportunities down the road,” he said.”<sup>48</sup> A member who was an advocate of conversion indicated that he favored growth for the company: “I’ve liked the board’s dream of going from where we started to No. 3. I d like to see them grow, long term,” he said. “I think the board had a bigger dream than some of us might have had in the beginning.” “Maybe we could be the biggest pasta company in the U.S.”, Herman said. “How many of the biggest does North Dakota have?”<sup>49</sup> Another news article cited the company’s SEC filing in which it stated that the company would be unable to obtain more capital from its members, so it had to convert in order to access capital markets for expansion. “Conversion will afford greater access to capital markets, which may allow it to expand its business over time, the company says in the filing. The document says the company is unlikely to obtain significant additional capital from its current members or other durum wheat producers . . . .”<sup>50</sup>

Several themes concerning expansion emerged from the interview data. Among them were the board of directors’ expansionary mentality and the board of directors’ worry about servicing debt from previous expansions. That the board of directors was interested in expansion

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<sup>46</sup> Newspaper Article #6

<sup>47</sup> Newspaper Article #7

<sup>48</sup> Newspaper Article #14

<sup>49</sup> Newspaper Article #14

<sup>50</sup> Newspaper Article #3

was confirmed by the interviews. Some had concluded that the board members' philosophy was to pursue expansion.

*Where did the expansion idea come from? Well, I think that was their philosophy. I mean, the people who are on the board of directors are bigger than average farmers and that's the way they... I don't know if that's good, bad or indifferent, but that's the way they do business. If something's successful well we'll just make I bigger you know. If we're making money growing pasta or producing pasta and somebody wants to sell their company let's buy, get bigger and make even more money. That's just the way they did it.<sup>51</sup>*

A few worried that this expansionary mentality had contributed to the company's financial difficulties, and thereby to the drive for conversion.

*They went out and bought this here, I don't know the name of it, but down there in Minneapolis and New Hope and down there they bought them places and bought warehouses and stuff out on the East Coast, which I'm sure they probably needed, but I mean to me they expanded too much too quickly and they should have concentrated on paying off their debt is what I think they should've done and I think the place would have been okay, but they had this thing about growing and being #2 or #3 in the nation and getting big and stuff like that and I think that's kind of the whole deal there.<sup>52</sup>*

Some suggested that the debt load from acquiring new properties made it difficult for the board of directors to service the debt. They surmised that through conversion, the board of directors hoped it might acquire outside capital to make its debt payments. *"Another reason for the conversion I think... I know as a coop they went for 6 or 7 or 8 years it was, it was set up that way in the financial things, their loans and stuff. They had some big balloon payments a year after the conversion and there was no way in God's world they were ever going to make them."<sup>53</sup>*

A number of disadvantages of cooperatives were noted. First, the process of raising capital from members was difficult and slow. Second, members were unable to contribute any more capital through stock offerings. Third, paying dividends deprived the company of the ability to accumulate capital. Fourth, private lenders were unfamiliar with cooperatives and unwilling to lend to them. Fifth, cooperatives had difficulties in entering into joint ventures and partnerships.

Some mentioned that they recalled hearing that cooperative status stood of the company in the way of pursuing partnerships or joint ventures.

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<sup>51</sup> Interview Transcript #23

<sup>52</sup> Interview Transcript #22

<sup>53</sup> Interview Transcript #22

How much a factor was access to outside capital in voting for conversion? *You know we were also told that you know as the company became a major force in the United States in pasta production that you know there were opportunities to you know partner-up you know or pursue kind of joint enterprises with others and our cooperative status was apparently getting in the way of some of that. I know for example the Stringfield's label that's out now, we were partnered with three others and you know we received information and that probably would not have been able to have been accomplished if we hadn't been a C corp now.*<sup>54</sup>

It was not just the status of the company as a cooperative that stood in the way of joint ventures or partnerships as much as it was the difficulty in raising capital as a cooperative.

What were some of the arguments they gave in favor of conversion? *I guess as far as bringing more equity into Dakota Growers, being able to expand and buy other labels. With Dakota Growers as a cooperative, there was no way to raise capital fast enough to buy, say a label that was out there that was up for sale. That happened and they had a chance to buy it, but they didn't have enough time to go out and raise the capital to do it. There was really no way of doing it with the owners as a coop. If we had a corporate structure, we could go out and sell bonds out in the open market to people other than growers to raise capital faster or we could take on a partnership with somebody else.*<sup>55</sup>

Others recalled hearing that the requirement that the cooperative pay dividends to its members deprived it of the ability to accumulate capital for expansion.

What were the reasons given by the board of directors for converting? *They needed more capital. If they didn't have to pay that out, a percent of the earnings, they allow that you have to pay at least 20% back you know. If you have to pay that back and if you happen to make a lot of money one year or two years or whatever, well you're suppose to pay it back in the form of dividends.*<sup>56</sup>

One member recalled that the board of directors said it had lost an opportunity for acquiring another company because financial institutions were not familiar with cooperatives and therefore unwilling to loan Dakota Growers the capital needed for the acquisition.

What were the reasons the board used to sell this idea of conversion? *They talked about capital acquisition and the fact that the board had wanted to do some expansion, there was an opportunity the previous year to buy another company that was for sale and they said that the financial institutions were not comfortable working with a cooperative. They weren't aware of how cooperatives worked so, therefore, they weren't ready, willing or able to provide capital to Dakota Growers so that they could acquire this other company. So, they lost out on what they thought was a big opportunity to buy another company. They were just sure there were going to be a lot more of those opportunities coming down the road, but as long as we were a cooperative we would have trouble borrowing money so we could take advantage of those. As soon as we were a corporation all the lending institutions understood those principles and they would stand in line to give us money.*<sup>57</sup>

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<sup>54</sup> Interview Transcript #20

<sup>55</sup> Interview Transcript #16

<sup>56</sup> Interview Transcript #10

<sup>57</sup> Interview Transcript #9

Another mentioned that he had heard that the company had lost an opportunity for an acquisition because a private sector lender was unwilling to lend to a cooperative.

*They also talked about that they had a lot of potential for an acquisition. That somebody, whether it was General Mills, or somebody... That they were not able to acquire funds to buy this company out because when they went to the big banks, the big banks... As soon as they found out they were a cooperative instead of a corporation, their buying power, they claimed, Dakota Growers claimed, was very limited. So, by converting to a corporation, they would have more buying power and wouldn't let an opportunity like that just slide away.<sup>58</sup>*

Still others recalled that raising capital in a cooperative structure was cumbersome, difficult and slow.

*I guess maybe it is harder to get investors when you get like to Dakota Growers to invest and then it takes too long to get the members approval probably, so there probably is some truth to that if I'm understanding your question right that it is an advantage to be a corporation instead of a cooperative.<sup>59</sup>*

*I did have some concerns with the ability of the company to move forward because of the restrictive nature of making decisions in the coop. I understand all that very well, but I know they can move more quickly to make decisions with a corporation than they could with the coop. I shouldn't say I know, I believe they can.<sup>60</sup>*

Some believed that the cooperative had exhausted the ability of its members to provide more capital for expansion.

*We found as we expanded and we offered the stock for sale, we were having trouble getting you know raising that capital. We had kind of saturated the North Dakota market so to speak. In other words, everybody who was interested had already purchased and actually purchased and you know the likelihood that you can maybe go to that same well for a third or fourth time was getting to be obvious that you I don't think that was going to happen.<sup>61</sup>*

*I mentioned we had already expanded and really had been unable to significantly expand or grow our base you know it was really basically the same group that just anted up more money and after the second time I mean... You know we were getting to the point... It's the same old thing about don't tie up all your money in one investment, well I think a lot of us were... I mean we were maybe able to do the second go-round, but there was probably a very diminishing likelihood that we would do the third or the fourth go-round.<sup>62</sup>*

The discourse concerning the disadvantages of cooperatives and the advantages of corporations in raising capital was also contained in the SEC filing.<sup>63</sup> The board of directors explored whether cooperative members would be willing to provide capital for expansion. If the company

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<sup>58</sup> Interview Transcript 22B

<sup>59</sup> Interview Transcript #15

<sup>60</sup> Interview Transcript #19

<sup>61</sup> Interview Transcript #20

<sup>62</sup> Interview Transcript #20

<sup>63</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

remained a cooperative, the board of directors maintained it would have to ask members for a part of the capital requirements which the bylaws state that members must provide through their patronage. This member-provided capital could be obtained by per-unit retains or patronage equity credits, but to date the board of directors had returned all per-unit retains and had distributed a majority of the patronage earnings in cash to the members.

The other option for the cooperative to use to raise capital would be to sell Equity Stock to its members.<sup>64</sup> While members had contributed significant amounts through the purchase of Equity Stock in the past, the board of directors did not believe that members have sufficient capital to do so again nor did the board of directors believe that they would be willing to contribute such capital without the opportunities afforded by increased liquidity. Furthermore, the board of directors believed that selling more Equity Stock would only exacerbate the delivery problems made difficult by weather and economic conditions. To acquire capital in the future, the board of directors insisted that the company would have change its practices concerning distributing per-unit retains and patronage earnings if it remained a cooperative.

According to the SEC filing, converting the cooperative to a LLC was also considered, but the board of directors did not believe that an LLC would provide as much opportunity for access to capital as would be possible with a corporate organization.<sup>65</sup> The board of directors also considered converting the pasta operations to a corporation and splitting off the milling operation to a LLC. Such an arrangement, however, presented operational difficulties due to a lack of integration. Moreover, the board of directors was concerned about the possible negative impacts on access to capital from not being a fully integrated operation.

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<sup>64</sup> Dakota Growers Securities and Exchange Commission Filing

<sup>65</sup> Dakota Growers Securities and Exchange Commission Filing

Included among the advantages of a corporation was that it could raise equity easier than a cooperative, it could pursue partnerships and joint ventures, and it had greater flexibility than did a cooperative. Among the rationales underlying the equity access motive offered by the board of directors included that corporations could access outside capital for expansion more readily than could a cooperative.

*What was your opinion of those reasons they gave for a conversion? I think there was a thought that, I know what it was, the ability to increase capital. If they needed to increase capital it would be easier to go out and do it as a corporation than as a cooperative where you had to actually go to the durum growers. That is the third reason I remember.<sup>66</sup>*

Some members recalled hearing one reason for conversion was that the company would have greater flexibility to pursue new opportunities, but others doubted that conversion was necessary for the company to realize flexibility.

*What explanations or reasons were given for conversion? It's getting to be a long time ago, but I guess my recollection is that one of them was it would give them more business flexibility. When they had a chance to form a relationship whether it was buying another company or forming a business partnership with somebody or some other kind of business relationship with another company it was a lot easier for them to do that. I'm part of other regional cooperatives that are bigger than Dakota Growers and they don't seem to have trouble networking with other people. They kind of drive us to distraction sometimes with some of the things they do, but they don't have any trouble networking or forming relationships or they don't have trouble teaming up with Cargill or whatever they think is to their advantage at the time, but that was part of their argument. They needed that flexibility.<sup>67</sup>*

Finally, having disposed of all other options, the board of directors concluded that a corporate organization offered the kind of access to capital that the company needed. The SEC filing mentioned that in 1999-2000, the board of directors consulted with U.S. Bancorp Piper Jaffray, a large regional investment-banking firm, which concluded that a corporate business form would provide the company with greater access to capital, but the size of the company's operation would "make it difficult to attract a significant national public market for its securities".<sup>68</sup>

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<sup>66</sup> Interview Transcript #3

<sup>67</sup> Interview Transcript #23

<sup>68</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

With the buttressing of expert opinion from Piper Jaffray, the board of directors asserted:

*Dakota Growers Pasta Company expects that conversion to a corporation will afford it greater access to capital markets, which may allow it to expand its business over time. We have no present plans to issue additional debt or equity securities, but if we believe it to be prudent and in our interests to acquire other businesses or invest capital in our facilities, we feel a corporate structure will make it easier to raise any necessary capital.*<sup>69</sup>

Similar statements that a corporate form of business organization offered the “*potential for greater access to capital markets*” are repeated throughout the filing.<sup>70</sup>

Five news articles, an op-ed, and an editorial suggested that conversion would assist in raising more equity capital. Several themes emerged from analysis of the news articles.

First, some members alleged that conversion would increase access to new stockholders and to new equity. Second, they asserted that conversion would generate new equity by expanding the universe of shareholders. Third, many felt that corporations could raise equity easier than cooperatives; conversion would increase equity, and a corporation would attract more capital. Fourth, some hoped that after conversion the company would be more attractive to lenders. Fifth, as a corporation, some believed that the company would be able to access capital for expansion.

Three news articles and one op-ed article suggested that conversion would allow the company to access more capital through an expanded pool of shareholders. One article quoted the company’s SEC filing that stated that “*It (conversion) would open the company to new shareholders and new capital markets.*”<sup>71</sup> Another article cited the decision to convert along with the company’s previous effort to secure Canadian shareholders and to source Canadian durum as an attempt to expand the pool of owners and to improve equity liquidity. “*Dakota Growers members voted a year ago to explore the idea of Canadian stock ownership and sourcing of durum. The prime reason was the same as for the latest move - to increase the number of people eligible to purchase stock, . . . .*”<sup>72</sup>

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<sup>69</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

<sup>70</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

<sup>71</sup> Newspaper Article #2

<sup>72</sup> Newspaper Article #1

In an op-ed article, the director and associate director of the Center for Cooperatives cited the SEC filing in which the company argued that conversion would increase liquidity and generate new equity through an expanded pool of investors. *“The stated reasons for the conversion are . . . . . . . . . . to increase the potential for generating new equity for continued business growth. Both objectives are to be achieved by increasing the pool of potential investors beyond the farmers capable of producing durum.”*<sup>73</sup>

An article cited the company’s SEC filing in which it contended that conversion would permit the purchase of stock by a larger pool of investors. *“The stocks could be owned by anybody vs. or current share can only be owned by producers of ag products.”*<sup>74</sup> Another news article quoted a member who favored conversion because he said it would increase the pool of investors. *“Herman said he is in favor of the corporate shift because in a co-op the stock is supposed to be owned by active farmers. In a corporation, retired farmers or anyone else will be able to own the stock.. “To me, it would be beneficial if a lot of people around the state could invest in it if they wanted to - farmer or not.”*<sup>75</sup>

An article containing responses from the board of directors to members’ questions concerned whether it had conducted any studies to determine whether there was any demand for company stock, and how much equity could be raised by expanding the pool of investors. In response, the CEO indicated that no such studies had been conducted but it made sense that conversion would increase the pool of investors and increase liquidity. *“What market studies indicate that there is significant outside interest in acquiring DGP stock? How much additional capital do those studies indicate as realistic estimates for investment in DGP? Dodd: It stands to reason that if the stock is offered to others besides durum producers, it expands the market and the liquidity or potential to sell a share of stock”.*<sup>76</sup>

In an article reporting members concerns about conversion, the SEC filing was cited in which the company maintained that conversion would increase access to new stockholders and to

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<sup>73</sup> Newspaper Article #7

<sup>74</sup> Newspaper Article #10

<sup>75</sup> Newspaper Article #14

<sup>76</sup> Newspaper Article #15

new equity. *“It (conversion) would open the company to new shareholders and new capital markets.”*<sup>77</sup> Similarly, another article also claimed that conversion would improve access to capital: *“Conversion will afford greater access to capital markets, which may allow it to expand its business over time, the company says in the filing.”*<sup>78</sup>

The op-ed article by the directors of the cooperative center cited as among the reasons for conversion that it would generate new equity by expanding the universe of shareholders: *“ . . . . . Both objectives are to be achieved by increasing the pool of potential investors beyond the farmers capable of producing durum.”*<sup>79</sup> An editorial in a major daily newspaper counted as among the advantages of conversion was that a corporation could raise equity easier than a cooperative. *“Also a corporation s broader investor base could enable it to raise money more easily than a co-op can.”*<sup>80</sup> Another article cited the company’s SEC filing that maintained that conversion to a corporation would increase equity and attract more capital. *“According to the SEC filing, converting to a corporation could provide more liquidity of current stock equity and attract new capital.”*<sup>81</sup> A member of the board of directors contended that as a corporation the company would be more attractive to lenders than it was as a cooperative. *“Significantly, the change to a corporation could make the company more attractive to large bank lenders, who aren't accustomed to dealing with farmer-owned co-ops”, Rice said.*<sup>82</sup>

Despite the board of directors’ optimistic projections of access to private lenders upon conversion, the state agriculture commissioner warned that public sources of capital would not be available to the converted company as they had been to the producer-owned cooperative. *“Johnson also sits on the state Industrial Commission, which oversees Bank of North Dakota programs. “We’ve tended to bend over backward for these farmer-owned, value-added ventures, Johnson says. It’s a huge public policy question about where we spend our resources and how we promote value-added agriculture, Johnson says. We*

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<sup>77</sup> Newspaper Article #2  
<sup>78</sup> Newspaper Article #6  
<sup>79</sup> Newspaper Article #7  
<sup>80</sup> Newspaper Article #8  
<sup>81</sup> Newspaper Article #9  
<sup>82</sup> Newspaper Article #1

*probably need to step back for a while and see how it plays out and reassess some of the public policies we have in place.”<sup>83</sup>*

In all of the discourse venues, the board of directors made a case for cooperative conversion because of the need for access to capital to facilitate growth. A largely unexamined assumption, in the entire discourse of equity access, was that of the necessity of growth and expansion. Because the company had grown and expanded significantly since its founding, many assumed that this might well be the case in the future. In order to convince members to vote for conversion, the board of directors laid out the disadvantages of remaining a cooperative as well as the advantages for converting to a corporation in regards to equity access. By drawing upon the expert discourse of equity access, buttressed by the expert opinion of a regional investment firm, the board of directors concluded that a corporation was the only form of business organization that could provide the kind of access to capital the board of directors believed was necessary for growth.

Even before reaching this conclusion, however, the board of directors led the reader through an analysis of the possibilities of other forms of business organization -- remaining a cooperative, converting to a LLC, or converting to a LLC/corporation -- for accessing capital, but it had found each of them lacking. Because this discourse was couched in equity access discourse, it again served as a bridge discourse between experts in neo-classical economics and members with the board of directors acting as an intermediary. Upon expressing their desires to redeem their equity (an in-order-to discourse), the board of directors responded with procedures for translating these politicized needs into administrative needs. By resolving the “in-order-to” needs of the members, the board of directors also resolved perceived needs of the company in

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<sup>83</sup> Newspaper Article #2

regards to equity access. The net effect of such discourse was to depoliticize it by presenting it as a logical outcome of the need to seek capital for growth.

### **Legal Discourse**

Advocates of conversion made extensive use of expert legal discourse in reference to the legal status of the durum purchasing pool and of the practice of the cooperative purchasing durum on behalf of members who were unable or unwilling to delivery durum. This discourse is evident in all three discourse formats. The main theme that emerged from examination of the data in these formats concerned the taxable status of the cooperative from receiving non-patronage income. In the SEC filing, it appeared as an anonymous legal authority or the company's legal counsel, in interviews it was referred to as a legal authority or the company's accountants and lawyers, and news articles made reference to the company's accounting firm.

In the context of the filing, legal discourse appeared in the form of legal authority concerning the taxable status of the cooperative receiving non-patronage income, the opinion of the company's legal counsel about the taxable consequences of conversion, and the opinion of legal counsel regarding the taxable status of Series D Delivery Stock.<sup>84</sup> Concerning the cooperative's taxable status, legal discourse appeared in the form of an ambiguous "*legal authority*" that "*suggests*" that the cooperative's tax status might be "*jeopardized*" if its inputs were derived mainly from non-patron sources. The board of directors emphasized in the SEC filing and in newspaper articles that the IRS "*might*" find the company's use of the durum purchasing pool in violation of cooperative tax law. The filing does not disclose whom the legal authority is that made this suggestion or whether this suggestion has been confirmed by the company's own legal counsel or was supported by other legal precedents.

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<sup>84</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

In discussing the taxable consequence of converting to a corporation, the board of directors deferred to the company's own legal counsel. Counsel had determined that the existing cooperative, the transitional cooperative and transitional corporation, both in Colorado, as well as the new North Dakota corporation and its shareholders, would not receive any gain or loss from the conversion for federal income tax purposes.<sup>85</sup>

The board of directors offered a caveat, however, in that the portion of counsel's opinion concerning the taxable status of Series D Delivery Preferred Stock was based on reasoned analysis rather than on legal authority. The filing asserted "*the portion of the opinion that relates to the issuance and receipt of Series D Delivery Preferred Stock is supported by reasoned analysis rather than definitive legal authority*". Furthermore, the filing continued, "*There is no legal authority on the issuance and receipt of Preferred Stock having delivery rights in an otherwise tax free reorganization. If the Internal Revenue Service were to challenge and prevail on the delivery rights issue, then a shareholder would likely recognize ordinary income in the amount of the fair market value of the delivery right, and it is possible, but not likely, that the North Dakota corporation would have taxable income in the same amount*".<sup>86</sup>

Interviewees recalled the use of expert-legal discourse when the board of directors alleged that the durum purchasing pool might put the cooperative in violation of cooperative tax law. As members recalled, they often heard the board of directors say, based upon the advice of the company's accountants and legal counsel that the company might be in violation of its cooperative status because the cooperative was relying on the durum purchasing pool to fulfill a majority of its members' delivery obligations.

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<sup>85</sup> The company had to transact the conversion in Colorado because North Dakota had no law permitting such a conversion to occur. In the conversion process, the North Dakota cooperative would first become a Colorado cooperative, and then a Colorado corporation and finally a North Dakota corporation.

<sup>86</sup> Dakota Growers Pasta Company Securities and Exchange Commission Filing

The board of directors emphasized that the existence of the durum purchasing pool indicated that the company was never a true cooperative, and therefore was in violation of the IRS code and could lose the cooperative tax status.

*The number one thing they told us and, of course, profitability was the thing I think that moved it. Behind that, they said because we weren't delivering the actual durum, like I wasn't growing the durum and delivering it, I was one of those growers who didn't and there were many, I think the vast majority didn't deliver the product, it wasn't a true coop and we were probably in jeopardy of losing our coop tax status. Well, that's what the auditors had apparently told them and I think some of that, realistically, was questioned because we formed what we called the Northern Grains Institution from which we bought the grain and re-sold it in my name to the boss of the coops.<sup>87</sup>*

The board of directors drew upon the expertise of their accountants and attorneys who implied that the IRS might question whether the durum purchasing pool violated the cooperative status of Dakota Growers Pasta Company. *"(If I remember right, they talked about that being one of the problems. The non-delivering of your own durum for grain and the IRS being concerned about that. I think one of their auditors made that comment or one of their lawyers. They didn't make the comment, but brought the concern forward to the board and whether it was management or what it was I don't know."<sup>88</sup>*

The board of directors employed this implied threat of an IRS inquiry most effectively to instill a sense of fear that it would have adverse effects on the cooperative. *"We did I think get some information from our accounting firm that we may be starting to get to the point that we were going to be questioned by the IRS on whether we would be maintaining or tax status or not. That was another issue and the difficulty of durum acquisition kind of made the company less profitable too so there were less dividends."<sup>89</sup>*

This was a point of contention with some members, however, because the board of directors produced no evidence of any direct challenge by the IRS nor could it answer why Dakota Grower's use of the pool was any different from other cooperatives that also made use of such pools.

So, there was an implied threat, but never an actual threat. *Yeah. I don't know. That's what they said and that was one the things I was kind of skeptical about. I mean, what do these other companies do you know, the oranges and whatever the... I can't remember the name of the company, but the cranberry juice.*

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<sup>87</sup> Interview Transcript #7

<sup>88</sup> Interview Transcript #6

<sup>89</sup> Interview Transcript #20

Ocean Spray. So, I don't know. I don't think the IRS has the time or inclination to send somebody out here to check and see whether, "did you actually dump that durum off your truck or did you buy it from the pool?" I mean, I don't think people who audit for the IRS even understand that kind of stuff. I mean, they're not farmers. They don't know how farmers handle their grain. They put it in a bin, they load it in a truck and haul and dump it in the pit and I don't think they understand any of that stuff and I don't think they could comprehend any of it. We could tell them we all got together and dumped it in a railcar at Harvey and shipped it down here on the Sioux Line Railroad and they wouldn't know anything about it. I always thought it was just a bunch of gobbledygook, but they claimed... That's what they claimed. They got into trouble with IRS over that. Maybe they're right and I'm just being skeptical again.<sup>90</sup>

A few asked whether the IRS had ever actually questioned the use of the durum purchasing pool. Because the pool became the usual practice for members to deliver durum to the company, the board of directors had first asserted that its practice was legal. Later as the board of directors began the campaign for conversion, it raised concerns about whether its use violated cooperative tax law.

*At Dakota Growers, the pool quickly became the way everybody started taking their shipments of durum because it was so much easier to do that than actually arrange shipping and all that stuff for your own durum and then get it graded and so forth. So, with the pool method, I think probably 90, there were statistics we had on this, maybe it was over 90% of the durum that came to the plant came from purchases from the pool. You know, we were advised that was legal and so forth. As we got closer to the issue that was raised finally about converting to a corporation, then the board started saying this is a real problem that we are buying from the pool and you guys aren't actually providing your own durum, so this threatens our cooperative status. I think there was probably some basis for saying it, but I think there the importance of that was vastly exaggerated in the debate over converting.<sup>91</sup>*

Some had heard that the violation was so egregious that it was inviting an IRS investigation.

So, what was it about the pool that created such a concern among the board of directors that they had to convert to a corporation? Well, I don't understand... I know what they said, but I don't understand it because it gets into... They indicated that IRS was hassling them because it wasn't exactly according to all their rules for a cooperative. If we wanted to operate as a cooperative, we were suppose to deliver and this pool arrangement was kind of on the borderline of not being legal or not being according to IRS rules. The tax technicalities of that are beyond what I understand, but that's what we were told.<sup>92</sup>

Still others wondered if there ever had been an actual threat to investigate the pool, inquired how other cooperatives that employ such pools had evaded IRS questioning, and whether the IRS would actually investigate the pool.

Was the fact they had a pool buying system and the tax implications ever discussed at these meetings about conversion? I'd have to say it wasn't discussed well. It wasn't talked about a lot. This wasn't advanced as a reason for conversion, because IRS is looking into whether or not this is a violation of cooperative law? I

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<sup>90</sup> Interview Transcript #23

<sup>91</sup> Interview Transcript #2

<sup>92</sup> Interview Transcript #23

*think that was, in my opinion now, over exaggerated. I don't in our research here it's never been. Nobody has ever been challenged on it. So, they were making a boogey man, not saying it couldn't happen, but it wasn't something that was happening.*<sup>93</sup>

Three news articles dealt with the issue of the legality of the durum purchasing pool from an expert – legal discourse perspective. Two news articles cited the SEC filing in which board members or officials of the cooperative allude to a legal authority that suggested that the tax status of the cooperative might be endangered by purchasing inputs from non-members. *“(T)here is legal authority suggesting that, if a cooperative's inputs are obtained predominantly from non-patron sources, its tax status as a cooperative might be jeopardized, the filing says.”*<sup>94</sup> Board members explained that although the cooperative had been relying on non-patron supply of durum, it had not yet had problems with the IRS, but they were concerned. *“In the last three years, the company has relied on non-members for durum but doesn't say how much. The co-op maintains it hasn't run afoul of federal income tax rules but acknowledges concerns.”*<sup>95</sup> The same concern about the cooperative's purchasing pool not being compliant with IRS tax was reiterated in a subsequent news article. *“The company in the past three years has relied more heavily on nonmembers for durum, but doesn't say how much. The co-op maintains it hasn't run afoul of federal income tax rules, but acknowledges concerns.”*<sup>96</sup> In a later news article, the tone changed from concern that the IRS might question the cooperative status of the company to speculating that the IRS would view the tax status unfavorably. *“Some worry the Internal Revenue Service could take a dim view of the co-op's current tax status because of this.”*<sup>97</sup>

If the fear of an IRS audit were not enough, the board of directors introduced another fear – that if the IRS found the company in violation of tax law, it would have to pay taxes on non-patronage income even if it did convert. *“The co-op thinks it's on firm ground, but if the IRS were successful*

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<sup>93</sup> Interview Transcript #5

<sup>94</sup> Newspaper Articles #3 & #6

<sup>95</sup> Newspaper Article #3

<sup>96</sup> Newspaper Article #6

<sup>97</sup> Newspaper Article #9

in its challenge, the retroactive taxation would apply to a newly formed corporate company.”<sup>98</sup> The board of directors maintained that the only way to avoid problems with the IRS was to convert because conversion would eliminate members’ requirement to deliver durum. “Changing to a corporation would remove members’ obligation to deliver grain, a requirement for favorable producer-owned tax treatment as a co-op”.<sup>99</sup> In another news article, the board of directors made the same claim: “The change eliminates the growers’ agreements, which requires a co-op member to deliver durum wheat as a condition of co-op ownership. The board says this will be an advantage to members because weather and economic conditions have prevented so many of them from delivering.”<sup>100</sup>

When members asked if the board of directors had sought an outside opinion from another accounting firm or from the IRS about the legality of the durum purchasing pool, the chief executive officer’s response was that they had not.

*Is the DGP accountant saying it is necessary to change DGP to a corporation and has the board sought a second opinion from another accounting firm? Has IRS been asked for an advisory concerning whether the IRS believes we are presently circumventing the intent of cooperative law? #9& #15 Dodd: The company’s Eide Bailly accounting firm is a most qualified adviser. No, the company hasn’t gone to the IRS for an opinion. We’re looking forward, not backward. In 1994, the co-op offered members an option to deliver grain through a pooling arrangement. About three years ago, the company created its wholly owned subsidiary, Northern Grains Institute, as its procurement arm.*<sup>101</sup>

In one article, the president of the North Dakota Farmers Union asked why the purchasing pool was a problem for Dakota Growers and not for other cooperatives that had the same pooling arrangement. Without offering any evidence, the chairman of another new generation cooperative as well as a member of the board of directors of Dakota Growers, asserted that the company Growers was not unique in this regard.

*Robert Carlson, president of the North Dakota Farmers Union, spoke against the potential change Saturday. Carlson asked the board why Dakota Growers stock ownership is in question when other co-ops - including Spring Wheat Bakers, which makes dough products from hard red spring wheat - didn’t have the same problem. “But the spring wheat co-op does have the same problem”, said Mike Warner, a member of Dakota Growers’ board, and chairman of the board of Spring Wheat Bakers.*<sup>102</sup>

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<sup>98</sup> Newspaper Article #6

<sup>99</sup> Newspaper Article #2

<sup>100</sup> Newspaper Article #6

<sup>101</sup> Newspaper Article #15

<sup>102</sup> Newspaper Article #1

By hinting that purchasing durum from non-members through the durum purchasing pool might be in violation of cooperative tax law, and by holding out the threat of an IRS investigation about this practice, the board of directors and officials used expert – legal discourse both to instill fear and to promote conversion as the only solution. The entire discourse about the taxable status of the cooperative conducting non-member business and the taxable implications of conversion had the effect of leaving the ordinary member of the cooperative sufficiently confused by the obscurity and ambiguity of the legal analysis. Without a legal background in both tax and cooperative law, a member lacked the ability to challenge the interpretation of the filing thus removing this entire area from common discourse and leaving it to the realm of the company’s legal counsel.

## **Oppositional Discourse**

### **Populist-Voluntarist Discourse**

Those opposed to conversion used populist-voluntarist oppositional discourse most often. Several populist-voluntarist themes were expressed in the news articles, op-ed articles, editorials, and interviews. First, some feared that conversion would result in a loss of control through democratic governance for durum producers. Second, others worried that power would be consolidated in non-local, non-producer investors or in the board of directors. Third, a few acknowledged that benefits of being a shareholder would be based on return on investment rather than on dividends. Fourth, some feared the loss of identification of a company as being cooperatively owned and -operated by durum producers. Finally, others worried that conversion to a corporation was contrary to the original purposes for which the company was organized.

The populist-voluntarist oppositional discourse that was expressed most often was that members would lose control through democratic governance of Dakota Growers if it became a

corporation. *“The reason I didn’t like it is because you know the investors basically lose all their control you know where as a cooperative you had more of a say I would say, you know one person, one vote. Now, with the corporation the ones who own the most shares have the most say in the company and what the company does.”*<sup>103</sup>

One member recounted the members’ concerns with the loss of democratic governance expressed at shareholder meetings:

*I mean, they didn’t like it, even if you’re going to make it a corporation, is there anyway we can keep the one member, one vote, or can we do this or do we have to do it for capitalization issues and stuff, can we keep some of the original plan? And, the answers were typically no.” “What kind of objections did they raise? Um, well, it was the one man, one vote and I believe the argument was raised that you know you would definitely have the ability to sell your stock now, of course, it has to be sold to somebody that was you know...”*<sup>104</sup>

One of the organizers of the company voiced his concern about the effects of the loss of democratic governance on member control: *“Everett Dobrinski, a Makoti, N.D., farmer and a member of the co-op’s organizing board, says he’s most concerned about the elimination of patronage dividends and elimination of the one-member, one-vote principle of the co-op. That would have an effect on the control and governance issues, he says.”*<sup>105</sup> A few members in the interviews raised the loss of local control through democratic governance as an argument to vote against conversion. *“They were coop-minded people and they didn’t like giving up all their control and all that good stuff like that. You know you attended the annual meeting you got to vote and this and that and now they send you a proxy ballot in the mail now you don’t even have to go to the annual meeting, which they don’t want you to go to the annual meeting you know.”*<sup>106</sup>

Although some worried about the loss of democratic governance, others acknowledged that from the beginning of the cooperative there had always been a struggle over that principle between the more cooperative-oriented members and the board of directors.

*So, he said that was a tension all along (between the cooperative minded members and the board of directors). He felt it was played out in a number of different venues. For instance, in setting up the regions for electing directors, he mentioned initially there was a discussion about setting of the regions for electing the directors based on equal number of shares rather than equal number of members and that was voted down initially. That was where he began to see evidence of the tensions within the cooperative member-*

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<sup>103</sup> Interview Transcript #22

<sup>104</sup> Interview Transcript #8

<sup>105</sup> Newspaper Article #2

<sup>106</sup> Interview Transcript #22

*ship, between those who owned a great deal of shares and those who didn't and the tension between a cooperative-minded philosophy versus a corporate-minded philosophy.*<sup>107</sup>

Although members were worried about the loss of democratic governance, equally troubling to others was the loss of information provided by the cooperative. *"The fact that we would, as members, not have much control and, although I guess I'm not sure that we ever had a lot of control even from the beginning, at least we had an information stream, the board and management put out a newsletter three or four times a year telling us what was going on as well as having the district and the annual meetings".*<sup>108</sup>

In addition to the loss of member control through democratic governance, others worried that a few shareholders or out-of-state interests would control the corporation. An op-ed article by the directors of the Burdick Center for Cooperatives raised a number of control issues that members should consider before voting for conversion. Included among them were importance of control and the effect of board of directors composition on stock performance.

*Control issues that must be addressed by members of Dakota Growers Pasta include: --The importance of continued farmer control. --Importance of continued control within the region. --Possibility of control gained by a national or multinational firm and the impact of that occurrence.--Performance of a farmer-dominated board vs. an external investor-dominated board. --The impact of the board composition (farmer or investor) on stock values, liquidity, debt acquisition and additional stock sales.*<sup>109</sup>

In regard to issues of member control, they contrasted control in a cooperative based upon one-member, one-vote as opposed to control in a corporation on the basis of one-share, one-vote.

They noted that it would be possible for a few persons to control the company based on ownership of a significant percentage of stock.

*Member control, as practiced by most cooperatives, means that each member has one vote regardless of the amount of business (patronage) done with the cooperative or the amount of member investment. In a corporate structure, the number of shares owned by the investor controls the number of votes. Conversion to a corporate structure will change the control of the business from patrons on a one-member-equals-one-vote basis, to multiple votes based on the number of shares owned by the investor. In a corporate business, it is possible for relatively few investors to gain control of the business through purchase of sufficient shares of stock or by obtaining proxy votes from other owners.*<sup>110</sup>

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<sup>107</sup> Interview Transcript #12

<sup>108</sup> Interview Transcript #9

<sup>109</sup> Interview Transcript #7

<sup>110</sup> Interview Transcript #7

While they noted that the proposed bylaws require that five of the board members must be North Dakota residents, they also noted that the bylaws allow for non-farmer, out-of-state owners to gain control. They suggested that conversion could be structured to maintain farmer control.

*The new bylaws of the proposed Dakota Growers Pasta Co. specify that five of the seven to 15 directors must be residents of North Dakota. These bylaws permit the possibility of control moving to non-farmer, out-of-state entities. It is possible to structure a conversion to a corporation and maintain farmer control. Saskatchewan Wheat Pool converted to a corporation, yet restricted voting rights to one specific class of stock owned only by farmers, and maintained the one-member-equal-one-vote principle.<sup>111</sup>*

During shareholder meetings, interviewees recalled that some members raised the concern about the loss of control of the company to out-of-state, non-producer investors. They were especially concerned about the possibility of a hostile takeover. The board of directors reassured them that they had incorporated provisions to forestall, but not prevent, such a takeover from occurring.

*Was it ever discussed (that) there was a possibility they would lose control and have leverage buyout and they would just be selling to any other company? Yeah, that was brought up. They claimed that had that fixed. I don't know. They claimed they had things in place. I don't know if it was in their bylaws or exactly when they converted, but they would be able to stop any hostile takeover.<sup>112</sup>*

*\_\_\_\_\_ did mention that one of the concerns raised at the annual meeting was the possibility of a hostile takeover. The board said they discussed that and put in provisions in their filing with the SEC to avoid the possibility of a hostile takeover, but \_\_\_\_\_ said there is nothing to prevent really a large company from coming in and buying up shares of stock and then getting controlling interest. The provisions the board put in place mainly delay the process or put roadblocks up, but nothing really to stop it.<sup>113</sup>*

After loss of control, the other most often expressed populist-voluntarist oppositional concern was that of the fear of centralization of power in the hands of a few investors or in the board of directors. The issue of the increasing power of the board of directors was raised in one news article: “The change to a corporation would end the one-member, one-vote principle that governs cooperatives. This would increase the power of the board.”<sup>114</sup> The increasing power of the board of directors was further illustrated in a later news article that documented the increase in concentration of

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<sup>111</sup> Interview Transcript #7

<sup>112</sup> Interview Transcript #13

<sup>113</sup> Interview Transcript #12

<sup>114</sup> Newspaper Article #3

shares in the hands of the members of the board of directors after conversion: *“The change marks the end of the one-member, one-vote principle of co-op ownership, and this will increase the power of the board. The current co-op board of directors and officers control 2.2 percent of the total number of shares and voting rights. If the conversion had occurred Jan. 25, they'd own 11 percent of the common stock and will have greater influence over matters submitted for votes than they had as co-op members.”*<sup>115</sup>

This concern about increasing centralization of power in the board of directors was also expressed in interviews. Members recalled that among the concerns expressed at shareholder meetings was how the board of directors would be organized and how much power it would have. *“ He said some of the concerns that were voiced were how the board of directors was going to be organized and the amount of power the board would have. Another concerned was raised about the conversion from one member, one vote to one share, one vote. He said although those issues were raised, the board had relatively pat answers that seemed to satisfy most people’s concerns.”*<sup>116</sup> Some members speculated that conversion was an attempt by the board of directors to avoid term limitations under cooperative’s bylaws, thereby preserving their power and influence and increasing their control. *“Another thing, the board was able to stay in power by changing over because their term limits were coming up, I think it was a nine year term limit, so they were able to stay in control that way. I guess I’m probably a little more skeptical of the board than most, but I’m too impressed with them. There is a lot of conflict of interest on that board, so I guess I’m a little skeptical.”*<sup>117</sup>

Another major concern was the loss of cooperative dividends that would be replaced with speculative return on investment. The op-ed article by the directors of the cooperative center contrasted the benefits to members from cooperative ownership to benefits to shareholders from corporate ownership.

*The current member/patrons of Dakota Growers Pasta receive benefits from their stock ownership through the sale of durum to the cooperative, equity stock appreciation, the right to trade stock with other farmers and the allocation of profits through patronage refunds. Under the corporate structure, the delivery and*

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<sup>115</sup> Newspaper Article #6

<sup>116</sup> Interview Transcript #12

<sup>117</sup> Interview Transcript #14

*sale of durum to the business is optional. Allocation of profits as dividends to investors is not automatic. Many corporations will retain profits to grow the business or reduce debt. The primary benefit to investors comes from increased stock values that can be converted to cash through the sale of the stock.*<sup>118</sup>

Arguments against conversion of Dakota Growers from a populist-voluntarist oppositional discourse perspective, but argued solely on economic grounds, included whether it was worth giving up mandatory profit sharing through dividends for the possibility of increased share value under a corporation. One noted that dividends would have been rather good in the year after the vote on conversion. *“Just on the pure economic financial self-interest we gave away an opportunity, I think, to receive dividends on earnings and, looking back, we would have received some pretty good dividends on earnings or would have been eligible to receive good dividends on earnings because there were good earnings last year. That money could have been dividended to the members.”*<sup>119</sup> One member recalled how someone at a meeting reminded members that once they voted to convert, dividends would disappear. *“I think the other thing was somebody challenged them with the fact with this conversion to a corporation was paying dividends as the coop did would be harder to do or would no longer be there.”*<sup>120</sup> Another remembered one argument against conversion was that the certainty of dividends would end upon conversion to a corporation. *“Another one was the lack of annual dividends that would come about as we went to a corporation. The fact that we sold a farmer-owned cooperative so we could get our yearly dividends would bolster our investment. That was going to disappear.”*<sup>121</sup> A few argued that following conversion to a corporation, they would no longer receive dividends as they had received as cooperative shareholders. Instead, their profit would come from stock speculation that they felt was contrary to farmers’ interests.

*They knew what a coop was, attend an annual meeting, if the company made money you got a dividend back or a share of the profits you know. If you had a corporation, then it goes up for public sale, public trading of stocks you know or shares. That’s how you make your money in corporate America. You buy shares, buy them low, sell them high, that’s how you make it you know. People don’t like that. The farming community wants to own a piece of the rock as the phrase goes you know. .*<sup>122</sup>

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<sup>118</sup> Newspaper Article #7

<sup>119</sup> Interview Transcript #2

<sup>120</sup> Interview Transcript #7

<sup>121</sup> Interview Transcript #9

<sup>122</sup> Interview Transcript #10

In several news articles and interviews members expressed concerns that conversion of the cooperative to a corporation would be detrimental to the original purpose for which the cooperative was organized. Members feared that the change in emphasis from adding value to durum to increase producer-members' income, and providing a market for durum as well as providing a price hedge would be foregone upon conversion when the company would become more concerned with acquiring durum as cheaply as possible without regard to its quality.

The first concern was that conversion of the company to a corporation would be abandoning the original purpose for which it was organized which was to add value to durum so that during times of low durum prices, producer-members would realize profit through the increased value. Some argued that severing the connection between durum production and production of quality pasta ended the rationale of the cooperative as means to add value to durum.

*Well, the principle one that I used was this connection with durum wheat producer and the importance of maintaining that connection because... if, in fact, you believe that they are two separate and distinct businesses, raising durum wheat and then milling the durum wheat, then fine, you know, it doesn't matter what corporate structure you have, but if that's the case, then I would argue it may not matter where you buy the durum wheat either (uh-huh). If, in fact, it's a separate business structure and if you as a producer of semolina and of pasta products are not tied to any of the producers who raise the durum wheat and you find that you can source durum wheat cheaper anywhere else in the world, why wouldn't you source it and continue to produce your pasta. That was my principle reason. I thought this whole thing was sold and delivered and put together to add value to North Dakota durum wheat. Severing that connection severs that rationale.<sup>123</sup>*

Another argued that the cooperative provided a price hedge as well and a market for durum as well as added value to it, none of which would be available after conversion.

*To me, the big advantage to growers being members of this was it gave you that hedge, that price hedge, that you really can't get off the futures markets with durum wheat. There is no futures contract that has any sort of stability that one can use to try and price protect. You can use a spring wheat hedge and a hybrid trading arrangement, and all those kinds of things, but nothing directly. To me, this was sort of an automatic one. I mean, if you're going to grow durum wheat and you were a member of Dakota Growers, you knew that for "X" percentage of your expected production, you had a market. Not only that, you knew that market, that you were going to sell this stuff to, was likely going to give you some price protection as well. So, if the price of durum went through the cellar, you would probably get a higher return as a grower at the end of the year from Dakota Growers because their profits would go up. So, that became your price*

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<sup>123</sup> Interview Transcript #3

*hedge as well as a guaranteed market for the durum. To me, that was the strongest reason, the strongest rationale for being a member of Dakota Growers and it was that rationale.*<sup>124</sup>

Others reminded members that converting to a corporation would remove one of the major reasons for organizing a cooperative in the first place, which was to provide a market for durum, and instead the company would buy durum as cheaply as possible wherever it could. “*Dakota Growers would no longer be out there to make a market in durum. They will be trying to buy durum as cheap as they can and they do that already anyway.*”<sup>125</sup> Some wondered whether the purpose of conversion was merely to acquire cheaper durum. “*Really, Dakota Growers wasn’t out there to buy durum for the most money, they were trying to buy it for the least amount and make the most profit, which any company would do. Yeah, that argument didn’t hold water for me. They were already doing that.*”<sup>126</sup>

One of the most unlikely voices expressing a populist-voluntarist oppositional perspective was the editor of a major daily newspaper. He raised the concern that the shareholders of the corporation would gain at the expense of the producers of durum. In his article he stated that corporate loyalty was to the stockholder who wants a high rate of return that would come at the expense of the price paid for durum. “*(In addition,) the loyalty (of a corporation) is to the stockholder, who is going to demand a high rate of return. That will come at the expense of the price you re able to pay for durum wheat.*”<sup>127</sup> The editorial also emphasized the loss of the ideological appeal and unique identity that cooperatives have for consumers. For him, the cooperative image itself added value to the product for consumers concerned about food quality and food safety. In addition, the populist image of the farmer-owned and -operated cooperative carried romantic appeal for consumers. For him, both of these images of the company should be considered as important as the organizational form that the company adopts.

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<sup>124</sup> Interview Transcript #3

<sup>125</sup> Interview Transcript #16

<sup>126</sup> Interview Transcript #16

<sup>127</sup> Newspaper Article #8

*Becoming a corporation takes away the structure that makes cooperatives unique. That's important not only in its own right, but also because of the price advantage which the uniqueness commands in the marketplace. In other words, it would change the company's image, and quite possibly for the worse. Cooperatives in America have a certain cachet or market power, which on a food label can rival that of the words, 100 percent organic. Both labels reassure the consumer about the product's origins: its quality, safety - and, in cooperatives case, its distance from agribusiness, a Big Business and anti-farm stereotype that makes many consumers recoil. This identity is a fundamental value created by the new (cooperative) organization, write Peter Goldsmith and Hamish Gowe, farm economists at the Urbana campus of the University of Illinois. The premiums that producers are searching for will materialize not only by reorganizing into new organizational forms, but more importantly by creating unique value not found elsewhere in the marketplace. Consumers across the country are sympathetic to the plight of producers on the American farm. Let them know a grocery product hails from a cooperative that is farmer managed and owned, and those consumers will respond. They'll buy the product and just might pay a premium for it, too.<sup>128</sup>*

Some members argued that with conversion the company would lose the consumers' identification of the pasta being produced by a farmer-owned and -operated business using North Dakota raised durum.

*Yeah, . . . loss of that whole idea that this is grown by North Dakota farmers and this is a special product because this is our best durum wheat. This is the best pasta you can buy. Maybe it still is good pasta I don't know. You still buy it don't you? We still buy it. If we see it on the shelf, we're going to pick that up because we own stock in it and even if I didn't it's from Carrington, North Dakota, and we still have a certain amount of pride in it, but it's not what it was. It's just like Cenex Harvest States. It's not quite governed like it used to be, but it's still our company and we still have pride in it.<sup>129</sup>*

These concerns reflected a populist-voluntarist oppositional perspective of cooperatives as consisting of their members as owners who govern them democratically while also raising concerns about conversion resulting in the weakening of local ties and the company being dominated by absentee, non-local interests. The contrast of patronage dividends with shareholder returns reflected the populist-voluntarist perspective of cooperatives benefiting members according to patronage, but following conversion the corporation would benefit shareholders based upon return on investment. The possibility of centralization of power in the board of directors reflected populist-voluntarist view of cooperatives as being governed on a democratic basis and existing to serve members' needs. That their benefits would not be derived from mandatory dividends but from stock manipulation reflected a populist-voluntarist perspective of coopera-

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<sup>128</sup> Newspaper Article #8

<sup>129</sup> Interview Transcript #23

tives being based on patronage and benefiting user-owners proportional to use. Fears that investors who owned or controlled a large number of shares might control the company and make decisions detrimental to durum producers demonstrated populist-voluntarist concerns that with conversion the company would not exist to empower members or to meet their needs but rather would be focused on narrower economic concerns. The criticism that conversion would be abandoning the original purposes for which the cooperative was organized reflected a populist-voluntarist view that cooperatives exist to serve the needs of their member users and that upon conversion the company would no longer be providing economic advantages to member-users. The board of directors responded to each of these concerns through reprivaization discourse.

### **Social Materialist Discourse**

It was rare for a social materialist perspective to be offered in opposition to conversion, whether in newspaper articles, editorials, letters to the editor or in interviews. Nevertheless, such discourse was contained in one news article and one editorial, and several members articulated a social materialist oppositional discourse. Several social materialist discourse themes arose from the interviews and newspaper accounts. First, some members worried that conversion would represent a loss of economic advantage for producer members. Second, a few members saw cooperatives as a means for producers to take control of their destiny. Third, several members thought conversion threatened control of producer-generated capital by non-farmers. Fourth, cooperatives had been seen as a solution to producers' economic woes. Fifth, cooperatives were perceived as being fundamentally different from corporations. Sixth, the state had always been an economic laboratory, and cooperatives were part of that experience. Finally, the discourse reflected the class alliances between corporations and the Republican Party and cooperatives with the Democratic Party.

In one news article, the commissioner of agriculture provided an example of a social materialist oppositional discourse when he mentioned that the company had been upheld as the example of producers organizing to control their destiny.

*It would be much harder to get APUC money for a corporate venture that is trying to do what Dakota Growers did as a co-op. In my mind, this connection with the producer has been the selling point with a lot of these value-added ventures”, Johnson says. “Dakota Growers is the one people hold up as the shining star of how farmers have taken control of their own destiny. If Dakota Growers goes corporate, it’s going to be much harder to get producers to invest in another value-added ventures,” Johnson predicts.<sup>130</sup>*

The commissioner’s comment explicitly recognizes the theme of the social materialist oppositional perspective that sees cooperatives as class practice of producers that acts in their collective class interest, and that conversion would be a permanent loss of this class practice unlikely to be resurrected again. The most prominent example of a social materialist oppositional perspective was from an editor who also is both an historian of North Dakota’s agrarian history and observer of North Dakota’s politics. In the editorial, he emphasized, much like the commissioner of agriculture had, that when Dakota Growers was organized, it was touted as a method for producers to take control of their destiny by building a producer-owned cooperative to act in their collective interests.

*When it was organized in the late 1980s, Dakota Growers was presented as a kind of solution to the economic woes facing North Dakota farmers. The group’s initial publicity – aimed at potential farmer members – emphasized farmers taking control of the destiny. When production began at the co-op’s plant in Carrington, N.D., advertising aimed at consumers also stressed that Dakota Growers is a farmer-owned company.<sup>131</sup>*

He further opined that conversion reflected the historical struggle between producers and outside capital in the agrarian-populist history of the state. The essential question for him was whether members of the cooperative were willing to surrender control over the company to outside non-farmer investors:

*There is a basic business question involved. A corporate structure would allow outside investors to own stock in the company and to have a voice in its management. Those prerogatives are limited to members of*

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<sup>130</sup> Newspaper Article #2

<sup>131</sup> Newspaper Article #13

*the cooperative. This, of course, is the question of capital. In a state with a radical past, this is a very big question. It's cropped up at critical times in the past, and each generation's answer has contributed to the state's political culture.*<sup>132</sup>

As an astute political commentator, he was aware of the influence of agrarian movements, especially the Non-Partisan League and the cooperative movement, which had established state- and producer-owned economic institutions, respectively, to provide countervailing power against out-of-state corporations that had for so long extracted surplus value from the state's farmers.

A few members argued that conversion of the cooperative would be a loss of economic advantage derived from producer ownership and control.

*I suppose they can still say that if somebody will believe them, but they don't have anything to back it up and it's no longer geared to bringing economic advantages back to the North Dakota farmer. . . Now, that it's a corporation it is still owned mostly by North Dakota farmers, but over time that will change and what I foresee in the future is some day there will be a board meeting and the management will come in and tell the board of directors you know the machinery is all worn out at the Carrington plant and we are going to have to replace all that and some accountant is going to say if you're going to replace all of the machinery the build is just a shell, you're going to take everything out and replace it with up-to-date modern stuff it would be just as cheap to build a whole new plant and if you're going to build a whole new plant that 2 cent a bushel advantage is to put it over here and good-bye.*<sup>133</sup>

One argued that the cooperative had operated so long in a non-cooperative manner by procuring durum through the pool, it really was not remaining true to its original purpose of adding value to members' durum. Rather than converting to a corporation, he thought the company should revert to its original purpose.

*The first argument is why do we want to go that route? Now, there was a lot of thought that there is too much water over the dam with this nonmember income. You know, they have operated it in a non-cooperative so long that it's already not a cooperative, but the argument was we shouldn't have done that. We should have stayed true. So, I think that was the first reason people opposed the conversion. It was a bastardization of the system, itself, and they resented that.*<sup>134</sup>

The previously mentioned editorial reflected the class alliances between corporations and the Republican party and cooperative movement with the Democratic party. The editor noted the affinity between opponents of conversion with the Democratic-NPL Party that had favored coop-

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<sup>132</sup> Newspaper Article #13

<sup>133</sup> Interview Transcript #23

<sup>134</sup> Interview Transcript #1

eratives, and the proponents with the Republican Party that had favored corporations. “*Republicans, historically and ideologically, are friendlier to corporations. So, it’s not too surprising that the choice facing Dakota Growers has a partisan ring. The company’s president, a leader of the move for change, is Jack Dalrymple, the Republican lieutenant governor. Agriculture Commissioner Roger Johnson, the highest-ranking Democrat in the Capitol tower, has questioned the change.*”<sup>135</sup> Such an association is not unusual as the Democratic-NPL Party contains the remnants of the Non-Partisan League and is closely associated with the Farmers Union which has long promoted and organized cooperatives. That the Farmers Union and the Democratic-NPL party have an affinity for cooperatives is not unsurprising. The Farmers Union’s advocacy of cooperatives is related to its anti-capitalist political philosophy (Mooney and Majka, 1995). That only producers could be members of cooperatives, is congruent with this philosophy (Crampton, 1965: 11) and the exclusion of the commercial or financial elite from cooperative membership was popular in the Great Plains where producers had long been suspicious of corporations and monopoly capital. Nor is the association of the Republican Party with corporations unusual as the statewide chamber of commerce has historically had strong ties to the Republican Party. It contains the remnants of the Independent Voters League that arose within the party in opposition to the Non-Partisan League.

Finally, the editor notes that what was at stake in the vote on conversion was the state’s reputation as an economic laboratory, its self-help image, its distrust of business, and its political nature.

*The state’s reputation as an economic laboratory, established almost a century ago, is at stake. So is its self-image as a place where people get together to solve problems – and as a place where business is deeply distrusted. So is the deeply entrenched nostalgia that sees North Dakota as a David of yeoman farmers resisting the Goliath of big business and outside interests. So perhaps, is the political complexion of the state.*<sup>136</sup>

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<sup>135</sup> Newspaper Article #13

<sup>136</sup> Newspaper Article #13

That the editor would call upon these historical images was not atypical in North Dakota where the effect of the agrarian, populist movement – whether it is the Non-Partisan League or the cooperative movement --is revered and celebrated. All of these images have roots in social materialist oppositional perspective that is found in the Farmers' Union political philosophy as identified by Crampton (1965): The farmer as a victim of nature and the capitalist political economy; cooperation as a means to combat capitalism; and defense of the family farm rooted in the agrarianism. These tenets are not of political philosophy are not unique to Farmers Union. They are perhaps the foundation of the agrarian-populist movement of which the Non-Partisan League and its experimentation with state-owned institutions and the Farmers Union advocacy of cooperatives are but two manifestations.

The commissioner's comment and the editor's opinion explicitly recognized the theme of the social materialist perspective that sees cooperatives as class practice of producers that act in their collective class interest, and that conversion would be a permanent loss of this class practice. These members' perspectives on the transformation of Dakota Growers reflected the historic tension between those who viewed cooperatives as acting in the collective class interests of farmers, as opposed to those who viewed cooperatives acting in the individual, economic interests of farmers.

## **Reprivatization Discourse**

### **Reprivatization by Economism Discourse**

Reprivatization by economism discourse was evident in the interview data, and it was expressed in several themes. First, members wanted to realize a return on their investment and to see their shares increase in value. Second, they attributed the enthusiasm for conversion to the possibility of realizing windfall profits. Third, by converting, the company could maximize prof-

its by sourcing durum as cheaply as possible. Finally, members feared that the company might fail if they did not vote for conversion.

Among those explanations that fall within the rhetoric of neoclassical economics, realizing a return on their investment was mentioned the most times in interviews as the reason members voted for conversion. Many members had seen the shares of stock of American Crystal Sugar -- a sugar beet processing cooperative -- greatly increase in value. These members had hoped that their shares of stock in the company would increase in value much as those shares of stock had done. Members of the company, however, had not seen the appreciation on their shares as they had anticipated, and they wanted to realize a return on their investment. *“I’m convinced of one thing that the lion’s share of the members, well, I made an investment here, I got a pretty big investment, I want to cash this in, retire on it.”*<sup>137</sup>

Related to the motive of seeking a return on investment was that of wanting to see their shares increase in value after conversion. *“So, you ship your grain to them for better value? Yeah. Yeah initially, but that was always a smaller part of the equation even in the very beginning. The bigger part of the equation was capital appreciation. How would your capital appreciate? Well, I guess felt over 10, 15, 20, 25 years just the value of the stock.”*<sup>138</sup> One member who was unopposed to conversion said that although he had enjoyed receiving dividends for his durum, he thought the way to realize a return was through stock value increases by acquiring durum as cheaply as possible. *“Herman appreciated co-op dividends in the past, but now believes the primary way for him to profit from Dakota Growers is for the company stock to increase in value. And the primary way for Dakota Growers to be more profitable is to acquire its durum at the lowest cost possible. “If I’m expecting Dakota Growers to pay me more for my durum, how are they going to sell the pasta?” he said.”*<sup>139</sup>

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<sup>137</sup> Interview Transcript #8

<sup>138</sup> Interview Transcript #9

<sup>139</sup> Newspaper Article #14

Because fewer members were actually raising or delivering durum, and because dividends had been meager or nonexistent in recent years, many members had begun to see their shares in the cooperative as captive capital that was not providing any return on investment. Once the connection between production, delivery, and the company had been severed, members began to think less about adding value to durum and began to think more about adding value to their shares through capital appreciation.

Through the prospectus, the board of directors had held out hope that after conversion the purchase of shares by non-producers would drive up the value thereby offering members the opportunity to sell them at a value greater than the current value. A few members, however, cast doubt on this possibility.

*I drove to \_\_\_\_\_ because it was a drizzly morning when I got up that morning and I was going to go to one anyway and I had already been to the annual meeting and I went over there. Jack was conducting the meeting. It was kind of a social, sitting over coffee. I suppose 80% of the people there were his friends. All they talked about was stock, PE ratio and all of this. This is a no-brainer. Why would there be any resistance to converting to a corporation because the stock value could rise and we could get rid of it. I mean, these were Red River Valley farmer investors. Looking at them I didn't know, but they're well dressed, they come to these meetings, they have to have a good head on them because they made money somewhere. But, I thought, you guys are idiots. This is not the way it's going to work. It isn't going to work. I mean I've been through some stock options, IPOs and all that in my life and you are being...<sup>140</sup>*

Some attributed the enthusiasm for conversion to the stock market fever of the late 1990s that had led to high expectations for a quick return on investment following conversion.

*What reasons the board had though for coming with the proposal, I'm not quite sure because I think they knew better than to think that there would be terrifically high value to stock if they converted to a corporation, but still I guess they must have been caught up in the whole stock market fever and admiration at the time. . . . I think they saw dollar signs in their eyeballs. I mean, I think they looked at Dakota Growers and started seeing dollar signs. Some people wanted a quicker return on their investment. I mean, we had been getting a fairly good return. The year before the conversion, the cooperative had not made any money, so there was no dividend that year and I think that people really thought well I want to sell some of my stock, make a bunch of money and keep some of it and sell it maybe later, but I think the overwhelming desire was to sell the stock and make a bunch of money. I think the fact that they weren't providing their own durum was terribly important to most people.<sup>141</sup>*

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<sup>140</sup> Interview Transcript #8

<sup>141</sup> Interview Transcript #2

Infected with this fever, members had held out hope that after conversion their shares of stock would rapidly appreciate in value. They quoted figures of other pasta companies shares selling at 22 times earnings, at 10 to 20 times their purchase price, or at seven or eight times the current value of their own shares of stock. Members hoped that the same would occur when the company converted so that they could realize windfall profits.

*I think a large reason though was that when this conversion happened we had a booming stock market and I think people really had unrealistic expectations for making a great deal of money. If they would convert to a C corporation, they thought they could be trading their stock on some sort of stock exchange or finding non-farm investors to buy it at maybe 10 or 20 times what they paid for it. One fellow at the annual meeting got up and said we should get 40 times the value of our stock and he got, you know, just a crashing applause at the annual meeting for a statement that was, well, the bluest of blue skies. I mean, it was totally out of all reasonable bounds, so there were unrealistic expectations for economic return if they would convert to a corporation. I think that was the main driving force.<sup>142</sup>*

A few members suggested that one hidden motive for pursuing conversion was that it would enable the company to source quality durum as cheaply as possible. By sourcing cheaper durum, the company would be more competitive with other pasta companies and turn a greater profit.

*You mentioned you thought there were other hidden agendas or different motives that weren't expressed. Well, I think procuring their grain from other sources was touched on, but you know they didn't really elaborate on it and trying to be competitive in buying that bushel of durum to turn into pasta was more of an issue than I think they gave credit to. . . . I really think they were looking at trying to buy it more competitively to make the bottom line and I really that was... You know I don't have proof or anything. That's just my gut feeling that they were just looking to try and buy it more competitively than buying it from the actual members.<sup>143</sup>*

One member who was unopposed to conversion felt that limiting the cooperative's sourcing of durum only from members put it at a disadvantage with corporations that could source it where ever it was cheapest. *"He said the co-op ideal of acquiring grain only from its members is an antiquated idea because large competitors are buying grain wherever they please. Similarly, every farmer, almost has a semi-trailer truck today and can drive by the local co-op to market somewhere else."<sup>144</sup>*

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<sup>142</sup> Interview Transcript #2

<sup>143</sup> Interview Transcript #24

<sup>144</sup> Newspaper Article #14

A few members were afraid that if they did not vote for conversion, the company would fail just as other new generation cooperatives had failed.

Do you think the fact that a number of ventures in new generation cooperatives have failed affected that vote? *Yeah. I think it did. Yeah. As a matter of fact, you would hear that whenever you would visit with people. I've been in Agra Oils, I've been in Pro Gold, I've been in the Dakota pasta cooperative and it's the only one that's still viable. I know when we went around on the restaurant, I helped with the Agraria restaurant equity drive, and there are still some people who are still smarting out there. It's a tough sell.*<sup>145</sup>

That fear was manifested in their concerns about the profitability of the company after conversion. In a lengthy article, one of the questions posed by opponents of conversion was whether the board of directors had conducted any forecasts comparing the profitability of the company as a corporation as opposed to a cooperative, and how cooperatives that had converted had fared. The CFO responded that profitability had nothing to do with organizational structure but rather on how taxes were assessed. *"The company does two- or three-year forecasts, but that wouldn't change if the company were a co-op or C corporation. That doesn't have anything to do with the profitability of the company. It would have to do with how taxes are passed through to the member."*<sup>146</sup> The chief financial officer also was asked whether he knew of any analyses of cooperatives that had converted to corporations. He responded that he was not aware of any such studies and did not believe that, if such analyses existed, they would be relevant. *"Friezen: Doesn't know off-hand of any. Results of other cooperatives that have converted to corporations may not pertain to Dakota Growers. We have to look at our own structure, what's the best going forward."*<sup>147</sup>

The data from the interviews, the newspaper articles, and SEC filing reflected the reprivatization by economism discourse in several respects. Members had begun to see their cooperative as a source of income. They wanted to divest of their membership because they perceived that the dividends they received were less than the return on investment forgone. They

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<sup>145</sup> Interview Transcript #7

<sup>146</sup> Newspaper Article #15

<sup>147</sup> Newspaper Article #15

viewed the cooperative as if it was an investor-owned firm, and as member-investors they sought the opportunity to divest of their stock by voting for conversion. Furthermore, because of the hegemony of the neo-classical economics discourse, they saw the cooperative as a collection of individuals or as a business no different from any other business.

### **Reprivatization by Depoliticization Discourse**

From a reading of the SEC filing and news articles from a reprivatization by depoliticization discourse perspective, some of the discourse in the SEC filing and comments from board members and officers arose in response to a number of concerns that members had about conversion. Some worried that converting the company reflected badly on cooperatives. Others were concerned that conversion to a corporation would be a significant change from a cooperative. Some were worried that producers might lose a market for durum. Often members stated that corporate income would be taxed twice, whereas cooperative income was taxed but once. Many were worried that non-producer interests might control the re-organized company. Finally, some feared that out-of-state interests could acquire the company through a hostile takeover. All of these concerns have their origins in the populist-voluntarist and social materialist oppositional discourses. In order to reject these concerns, they had to be incorporated into the discourse; therefore, they had to be first recognized and then later dismissed or minimized. However, by recognizing some of the members' concerns and incorporating them into the discourse, it increased their legitimacy and universality for further contention.

In three news articles, a board member, the vice president, and the chief financial officer went to great lengths to depoliticize the concerns of members that conversion was a reflection on the disadvantages of cooperatives. That such a reprivatization by depoliticization discourse was

necessary was probably a concession to the high degree of support for and participation in cooperatives in North Dakota.

Board members as well as the chief executive officer went to great lengths to depoliticize the concerns of cooperative members that the conversion was a reflection on the disadvantages of cooperatives as opposed to corporations. In one of two news articles, a board member was quoted as saying they had always enjoyed the image of being a coop and the loss of that image was a negative consequence of conversion. *“These are hard changes for some co-op champions to swallow”, Rice acknowledged. “With change there’s always pluses and minuses”, Rice said, acknowledging the loss of the co-op image is a strong negative. “We’ve always felt really good about being a co-op, and we’re going to miss that.”*<sup>148</sup> He attempted to depoliticize the loss of the coop image by wrapping the to-be-converted company in the folksy image of cooperatives. *“We’re still going to be a mom-and-pop, people-help-each-other group of pasta makers.”*<sup>149</sup> The board member went on to dispel any idea that they were pursuing conversion because of the durum purchasing pool had raised questions about the validity of a cooperative. *“There’s every possibility that those rumors have been out there, but that’s clearly not why we’re doing this”*<sup>#1</sup> He stated that conversion would eliminate this concern. *“This action, of course, will totally eliminate that from being a consideration forever. It’s kind of like a little bonus, I guess. But it’s not the horse that pulls the cart”*.<sup>150</sup>

The vice president of the company specifically tried to depoliticize the idea that conversion in any way reflected negatively upon cooperatives. *“The specifics of the situation that is facing Dakota Growers Pasta Co. is not about the general philosophy of coops and ‘corps.”*<sup>151</sup> In a further attempt to alleviate fears that selling shares of stock to non-farmers would result in loss of local and farmer control, the vice president depoliticized it by reiterating that the company would still be farmer-

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<sup>148</sup> Newspaper Article #1

<sup>149</sup> Newspaper Article #1

<sup>150</sup> Newspaper Article #1

<sup>151</sup> Newspaper Article #5

owned and controlled. *“We think it’s great to be a farmer-owned business. It’s true that non-farmers will be able to buy the stock”,* (but conversion has been) *“set up so it will continue to be controlled by, basically, North Dakota farmers.”*<sup>152</sup> In a letter to the editor, another board member emphasized that conversion was in no way a reflection on the value of cooperatives. *“I think it’s important for people to know that the board of directors of Dakota Growers does not consider this any kind of negative statement about the value of the cooperative structure.”*<sup>153</sup> Furthermore, this board member stated that conversion was not to be seen as a reflection about the desirability of organizing as a cooperative in the first place. *“On the contrary, Dakota Growers never has regretted its original decision to organize as a cooperative, and it proved itself under the circumstances at that time.”*<sup>154</sup> In a further attempt to depoliticize the idea that conversion was a negative reflection on cooperatives, the CEO stated that by keeping delivery stock as well as the value-added emphasis, the company was retaining the new generation cooperative philosophy in practice, if not in form. *“Dakota Growers will keep the co-op philosophy in the form of Series D stock, which allows the stock to stay in the hands of growers in the position to deliver adequate-quality durum to the company. We’re not giving up on the value-added side, or our link to the farmer, Dodd says. We’re still promoting this company from-field-to-the-plate.”*<sup>155</sup>

In an attempt to strengthen the reprivatization argument of the possibility of greater returns from a corporate as opposed to a cooperative organization, the board of directors asserted in the SEC filing that new investors might emphasize quarterly performance and growth more so than had the members of the cooperative. In a news article in which the chief executive officer answered questions posed by members, he attempted to depoliticize further the argument that a corporate organization would be significant departure from cooperative business dealings. *“We believe that the operations of the business will not change as a result of opening up ownership to both producers*

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<sup>152</sup> Newspaper Article #5

<sup>153</sup> Newspaper Article #11

<sup>154</sup> Newspaper Article #11

<sup>155</sup> Newspaper Article #15

*and non-producers*”.<sup>156</sup> By asserting that the operations of the company would not change by including non-producers as investors, this sentence served two purposes: It confirmed that they might expect more dividends under a corporative business structure, and it reassured them that in terms of day-to-day operation the corporation would not be significantly different from the cooperative.

That members might lose a market for durum was addressed in the SEC filing. One of the original purposes for organizing the cooperative had been to provide a market for durum as well as to add value to it for the producer owners. One of the fears of some members as they considered voting for conversion was whether they would lose this market for their durum. The discourse had to depoliticize this concern by first acknowledging their concern and then incorporating it into the discourse by providing Series D Delivery Stock. As mentioned in the weather/disease/delivery discourse, members would no longer be obligated to deliver durum, but would be given the privilege to deliver as much durum to the company as they had to the cooperative, under specified conditions, if they owned shares of Series D Delivery Stock. Thus, the board of directors would continue to ensure a market for durum producers if they chose to sell durum to the company thus maintaining, if only in appearance, the idea that the company was organized to provide a market for durum. However, the price they would receive would be the prevailing market price rather than the market price plus premium they received whenever the market price was below a set fixed price that they received as a cooperative member. After conversion, each share of Series D Delivery Stock would entitle the holder to deliver one bushel of durum on a “first-come, first-served” delivery basis as long as the company needed durum. This privilege was not absolute, however, as producers would have to watch the company’s website to know when the company required durum delivery. Therefore, through the provision of delivery

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<sup>156</sup> Interview Transcript #15

rights, the SEC filing discursively maintained the appearance, if not the reality, of the possibility of delivering durum to the company and the preservation of a market for durum. The filing makes it clear, however, that the company would be free to purchase durum wherever it could do at the least cost.

The discourse of the SEC filing minimized the difference in taxation between cooperatives and corporations, thereby defusing the argument that dividend income from a corporation was taxed twice, whereas dividend income from a cooperative is taxed but once. To counter this argument, the board of directors in the SEC filing argued that distributions of cooperative income resulting from member patronage were not taxed at the cooperative level but was taxed twice at the member level: Once for personal income taxes and again for a 15.3 percent self-employment tax. *“In general, corporate distributions will likely result in greater overall taxes, but not to the degree implied by the phrase “double taxation”, since distributions of both cooperative and corporate income are subject to double taxation”*.<sup>157</sup>

By pointing out that income from cooperative dividends actually was taxed twice, just as was corporate income, the board of directors attempted to depoliticize this oppositional argument by minimizing it, or perhaps by obfuscating it.

A major concern of members opposed to conversion was the loss of local control by producer members. A news article a month before the vote quoted the company’s SEC filing in which the officers of the company attempted to depoliticize those concerns by stating that a change in ownership should not affect company operations, whereas increases in durum prices would adversely affect profits. *“While this broader investor base isn’t likely to change operations of the*

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<sup>157</sup> Interview Transcript #16

*business, the filing acknowledges that future increases in durum costs could have a material adverse effect on operating profits.”<sup>158</sup>*

In a further attempt to defuse any concern that upon conversion, producers would no longer have control over the company, the chairman reassured them that they still would have influence on the board of directors because a certain number of seats were required to be filled by producers. *“The new rules require farmers and North Dakota residents to hold some seats on the board. All of those things, individually, may not be huge, but taken as a group, they’re going to be a very strong method of keeping the control in the hands of North Dakota farmers.”<sup>159</sup>* By maintaining a third of the board of directors as North Dakota residents and durum producers, the board of directors maintained in the SEC filing the discursive appearance that the composition of the board of directors of the corporation would be only slightly different from the composition of the board of directors of the cooperative.

Another news article that quoted the SEC filing stated that although the composition and size of the board of directors would change after conversion, at least five members would have to be North Dakota residents and three would have to be small grain producers, thereby retaining some local and producer control. *“The board: The same nine current board members will remain. They would serve the same three-year, staggered terms, with a third of the seats up for election in any year. The board legally could range from seven to 15 members. In any case, at least five will be North Dakota residents. Of those five, at least three must have the ability and resources to produce small grains, including, but not limited to durum.”<sup>160</sup>*

In addition to the above requirement, the same article again quoted the SEC filing in which the board of directors attempted to depoliticize concerns that once the company was converted, it could be subject to a hostile takeover. The board of directors maintained in the filing

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<sup>158</sup> Newspaper Article #6

<sup>159</sup> Newspaper Article #15

<sup>160</sup> Newspaper Article #6

that defensive measures would prevent that from occurring and which would again ensure some measure of local, producer control.

*Anti-takeover: The corporation creates a defensive mechanism against unwanted corporate takeovers. These would kick in if a person or group acquires or tenders for 15 percent of the corporation's common shares. A dilution would occur in which current shareholders could buy shares at a steep discount to the market. The mechanism can force a potential acquirer to negotiate with the board of directors, potentially giving the company time to find other alternatives or parties than the initial suitor.<sup>161</sup>*

Because one of the reasons for organizing cooperatives had been to grant producers some independence from corporations that marketed their commodities, members have been naturally apprehensive of losing whatever control they had gained over their cooperatives by a hostile takeover of the converted company. The chairman of the board of directors reassured members that such a takeover was impossible because of the procedures put into place. *“What safeguards would be in place to prevent a hostile takeover of DGP if it becomes a corporation? Dalrymple: Several safeguards, including a stock dilution process would kick in as an anti-takeover mechanism. This increases potential holdings by existing shareholders whenever a single stockholder exceeds 15 percent ownership.”<sup>162</sup>*

In an attempt to defuse further any thought that conversion reflected negatively on either cooperatives or the company's relationship to producers, the CEO added that by keeping delivery stock as well as the value-added emphasis, the company was retaining the new generation cooperative philosophy in practice if not in form. *“Dakota Growers will keep the co-op philosophy in the form of Series D stock, which allows the stock to stay in the hands of growers in the position to deliver adequate-quality durum to the company. We re not giving up on the value-added side, or our link to the farmer, Dodd says. We re still promoting this company from-field-to-the-plate.”<sup>163</sup>*

As discussed in the SEC filing, to prevent a hostile takeover the rights plan provided one purchase right for each share of Common Stock held at the time of conversion. Both producer members as well as non-members took great pride in the fact that Dakota Growers Pasta Company was a North Dakota company owned by North Dakota durum producers. Under coopera-

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<sup>161</sup> Newspaper Article #6

<sup>162</sup> Newspaper Article #15

<sup>163</sup> Newspaper Article #15

tive organization, it was be impossible for a hostile takeover to occur, as producer members owned the stock. Given the populist heritage of the state, often expressed as antagonism towards corporate, and especially outside interests, the board of directors had to ensure that the possibility of a hostile takeover would not occur. Thus, it established a Rights Plan that would make an “*unwanted acquisition unlikely and may delay or prevent attempts by entities to acquire control of the North Dakota corporation without shareholder approval*”.<sup>164</sup>

To prevent a hostile takeover, the rights plan would provide a dividend of one purchase right for each share of Common Stock held at the time of conversion. The purchase rights would go into effect when a person or a group acquired more than 15 percent of the shares of Common Stock or began a tender or offer for 15 percent of the shares of stock. In that event, the board of directors would initiate the rights plan so that existing stockholders would obtain shares of stock at a significant discount relative to the fair market value of the stock. The existence of the rights plan, according to the SEC filing, would force the potential acquirer to negotiate with the board of directors to avoid initiating the rights plan. It also gave the board of directors time to explore other offers and alternatives. The effect of the rights plan would “*cause significant dilution to the potential acquirer and make an unwanted acquisition unlikely*”.<sup>165</sup>

Thus, the existence of the rights plan discursively maintained the appearance of the company’s continuing local control by producer-stockholders and continuing to be a North Dakota corporation. Despite the existence of the rights plan, and other protective measures in the article of incorporation and bylaws to prevent a hostile takeover, the board of directors asserted that there was no assurance that a hostile takeover would not be initiated or if completed would be on terms favorable to the shareholders.

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<sup>164</sup> Interview Transcript #16

<sup>165</sup> Interview Transcript #16

## Summary

The intent of this research was to discern the nature and kinds of arguments used by both proponents and opponents of conversion as presented through interviews with members of the cooperative as well as cooperative knowledgeable, the SEC Filing, and articles, editorials and letters to the editor in major newspapers. It attempted to answer the following questions: To what extent did both the proponents and opponents draw upon the expert discourse of neoclassical economics to support or oppose cooperative conversion? To what extent did opponents use oppositional discourse to raise both economic and non-economic concerns about conversion? To what extent did opponents of conversion make use of oppositional discourse to oppose conversion? How did the proponents of conversion neutralize the arguments of those opposing conversion? Which of the discourses was more effective in convincing members to vote for conversion?

The first purpose of this analysis was to determine the extent to which the proponents and opponents drew upon the expert discourse of neoclassical economics to support or oppose cooperative conversion. The rhetoric of neo-classical economics certainly did dominate the discourse of both the proponents and opponents of conversion. Proponents of conversion made extensive use of the reprivatization discourse and expert social science (neoclassical economics) discourses. Within the reprivatization discourse, proponents made extensive use of the economic arguments of return on investment, increase in share values, and windfall profits. Concerning the expert social science (neoclassical economics) discourse, proponents of conversion relied heavily on equity liquidity and equity access motives. Opponents questioned the economic assumptions underlying conversion. In particular, they asked whether it was worth surrendering profit sharing through dividends for the remote possibility of increased share values? Would

shares actually increase in value? By converting to a corporation, would the company lose the advantage of access to quality durum? Would what members gained in return on investment as a corporation offset what they would have lost in the price hedge and market for durum that a cooperative provided?

A second purpose of the analysis was to determine the extent to which opponents used oppositional discourse to raise non-economic concerns about conversion. To oppose conversion, opponents drew upon the populist-voluntarist discourse arguments of loss of control, loss of voting privileges, concentration of power, loss of democracy, and loss of identity to oppose conversion. Despite the lack of its apparent success, opponents drew upon the populist-voluntarist discourse upon most often in their arguments against conversion. The most often mentioned argument of the populist-voluntarist oppositional discourse that opponents relied upon was that members would lose control of their company once it converted to a corporation. They argued that the loss of control would be accomplished by a change in voting procedures from one person -- one vote to one share -- one vote. Opponents argued that a corporation would not only be less democratic than a cooperative, but it would also be less responsive to its shareholders than is a cooperative. Opponents feared that with one share – one vote, power would be consolidated with those who held the most shares, and they pointed out that some of the members of the board of directors of directors had the most to gain by a change in voting privileges because they collectively owned a significant number of the shares of stock. Finally, opponents argued that conversion would involve the loss of any market advantage that being a farmer-owned cooperative provided.

Concerning loss of control, opponents emphasized that with conversion to a corporation, the producer-members would lose control of the company to outside investors. The loss of con-

trol would be accomplished by the change in voting privileges from one person, one vote under a cooperative to one share, one vote under a corporation. With the change in voting privileges, the company would become less democratic and less responsive to producers' interests. Because members of the board of directors held substantial shares of stock, with conversion and a change in voting privileges, their control over the company would be consolidated. Finally, opponents argued that conversion would involve the loss of any market advantage that being a farmer-owned cooperative provided.

Although opponents employed a social-materialist discourse perspective, its use was rather inconsequential in comparison to the use that they made of the populist-voluntarist discourse. Those who argued from this discourse perspective reminded members a corporation was significantly different from a cooperative. They reminded others that a corporation has a different orientation towards producers than does a cooperative. Opponents feared that converting to a corporation was contrary to the original purposes for which the company was organized. They worried that conversion would result in a loss of any economic advantage to producer members derived from producer ownership and control.

A third purpose was to determine how the proponents of conversion neutralized the arguments of those opposing conversion. Concerning the advantages of a corporation, proponents of conversion effectively used reprivatization arguments to convince members that their individual interests, as opposed to their collective interests, would be better served through conversion. By recognizing members' concerns about wanting to realize a return on their investment, by holding out the possibility that their shares might increase in value, and by hinting at the possibility of windfall profits, proponents appealed to members' individual interests in realizing an individual gain as a corporate investor rather than their collective gain as owners of a coopera-

tive. Proponents further appealed to members' individual self-interest by instilling a fear of an IRS audit of the durum purchasing pool, hinting that if the IRS found the company was in violation of its cooperative status, members might lose their investment entirely.

The final question concerned which of the discourses was more effective in convincing members to vote for conversion. Proponents of conversion perhaps made the most effective use of expert discourse in the form of neoclassical economics' equity liquidity motives. This motive was mentioned most often by those interviewed as the most convincing argument that prompted members to vote for conversion to a corporation. Because of weather and disease problems, few members were raising durum any longer. They were still obligated to fulfill their requirements to deliver durum, which they did through the durum pool. Furthermore, many members wished to retire from farming and wished to use their equity as part of their retirement funds. Those who were still farming, but who were no longer raising durum, wished to put their equity to other uses. Because dividends had been meager or non-existent in recent years, members began to view their investment as being held hostage under current conditions. Through conversion, the board of directors held out the possibility that their investment would have more liquidity as a market developed for their shares.

About the disadvantages of a cooperative, members most often mentioned the equity access motive as a persuasive argument used by the board of directors to convince them to vote for conversion. All of the proponents' arguments against cooperatives had to deal with cooperatives' alleged inability to access capital for expansion. They implied that as long as the company remained a cooperative, the fewer were the opportunities for expansion, and the more remote the opportunities for members to unload their shares. According to proponents of conversion, cooperatives could not access outside capital as readily as could corporations. They alleged that the

company's cooperative status stood in the way of it becoming involved in joint ventures. They also stated that the requirement that the company had to pay dividends made it difficult for the company to accumulate capital. According to proponents, private lenders were unfamiliar with cooperatives and were, therefore, unwilling to lend them money for expansion. They also asserted that raising capital for expansion from members was slow, cumbersome and difficult, and furthermore, that the company had exhausted members' ability to provide more capital for expansion. From an analysis of the discourse, it was rather the accumulation of disadvantages rather than any single disadvantage that deprived the company of needed capital for expansion.

### **Conclusion**

Why did the campaign to convert Dakota Growers Pasta Company from a cooperative to a corporation succeed? Conversion seemed improbably in North Dakota for a variety of reasons. The state has a radical agrarian past where cooperatives draw upon a history of populist anti-corporate rhetoric. Cooperatives are ubiquitous in the state, and their physical presence is a prominent feature of the landscape. Knowledge and understanding of cooperative principles are deeply embedded in the consciousness. Cooperatives are integral to the history, economy and politics of the state. For these reasons, it was unthinkable and unfathomable that the flagship of the new generation cooperative movement would convert to a corporation.

From the data, it appears that there were perhaps four major explanations. Extreme weather conditions and the rise of *fusarium* head blight made it difficult, if not impossible, for members to raise durum. When members were no longer raising durum, they began to think less about adding value to durum and instead thought about adding value to their shares of stock, or they had begun to think of their shares as captive capital. No organized and effective opposition effort emerged to challenge the board of directors' and company officials' assertions about the

necessity for conversion. Finally, advocates of conversion made effective use of reprivatization and equity liquidity and equity access discourses.

Data from all three-discourse formats confirm that weather conditions and disease had established the context in which the discourse of conversion would take place. Together these two conditions motivated the board of directors to offer conversion as a solution and for members to vote for conversion. Excessive rainfall and humidity and the rise of fusarium head blight created conditions in which members were unable to raise durum as well as to fulfill their requirements to deliver durum to the cooperative, led more and more members to rely on the durum purchasing pool to fulfill their obligations, and created problems for the cooperative in procuring quality durum.

When members were no longer delivering durum to the company, they began to think less about adding value to durum and more about adding value to shares, or they began to view their shares as a captive investment that they would like to unload. Through the prospectus, the board of directors held out hope that with conversion, the demand by non-producers for the stock would create a market as well as drive up the share value. Encouraged by the stock market fever of the 1990s, some had unrealistic expectations bordering on euphoric optimism about the values of their stock reaching extraordinary and unreasonable levels after conversion.

Data from interviews and newspaper articles support the reprivatization by economism discourse. Some members had begun to see their cooperative as a source of income. They adopted an investor orientation towards the cooperative, and they viewed the cooperative as if it were an investor-owned firm. On the other hand, some members wanted to divest of their membership because the dividends they received were perceived to be less than the return on investment forgone. As member-investors, they sought the opportunity to divest of their stock by vot-

ing for conversion. In general, members seemed to have adopted the idea of the cooperative as a collection of individuals or as a business no different from any other business.

## **Recommendations**

The analysis of the discourse of conversion indicated that expert discourses of equity liquidity and equity access as well as the reprivatization by economism discourses dominated the conversation about conversion. The populist-voluntarist and the social materialist oppositional discourse arguments did not seem to have much influence or effect at all except among those who were already critical and perhaps among some Farmers Union members. Through newspaper articles and in public meetings, a few members attempted to challenge the rationale, the economic assumptions, as well as the probable consequences of conversion. The opponents argued from a weak vantage point, however, because all they could do was to ask the board of directors or the officers of the company to substantiate their claims and predictions. The opponents never had the resources to develop a critique of the board of director's or the officer's assertions or claims. A reading of the SEC filing indicated that the board of directors only conducted one study about conversion, and that was only to determine which organizational form would provide better liquidity. They did not conduct any studies of the outcome of conversion, and only had their opinion buttressed by the opinion of their own accountants and legal counsel. All that the members had was board of directors' opinion or that of the company's accounting firm and legal counsel. Early in the campaign for conversion, the director of the USDA Rural Development Cooperative Programs offered funding to hire Lee Estenson, Vice President and Leading Team Manager, St. Paul Bank for Cooperatives, to conduct scenario planning together with the board of directors and with opponents of conversion. Unfortunately, the board of directors refused this assistance when the chief executive officers relayed it to them.

The purpose of scenario planning would have been to project the likely outcomes of conversion for members and for the company by remaining a cooperative versus converting to a corporation. Scenario planning attempts to write different scenarios about the future based on uncertain and influencing driving forces. Based upon the work involved in creating these scenarios, as well as the knowledge gained by constructing the likely outcomes in each scenario, the board of directors and the members could have made a choice informed by these scenarios as to the likely outcome of continuing as a cooperative or converting to a corporation. In the event that the board of directors of a cooperative should begin to believe that the cooperative would be better off as a corporation, the board of directors should be required to contract with an independent third party firm to assist it in conducting scenario planning. Therefore, one recommendation would be that any cooperative considering conversion should engage in scenario planning to determine whether the outcome of conversion is beneficial both to the members and to the cooperative.

Another difficulty that the opponents of conversion experienced was that they were a small minority with no legal recourse or standing within the bylaws to challenge the board of directors. Recently, the North American Bison Cooperative adopted provisions modeled after a Canadian statute that allows a minority (20%) of the members to call for a third party performance audit and review of management practices in the cooperative. Had this provision been incorporated into the bylaws of Dakota Growers Pasta Company, early on before the practice became commonplace, a minority of members could have called for a review of the company's practice of purchasing durum for members from non-members without charging a fee or crediting members' accounts.

According to the membership agreement, if members were not able to deliver durum, the cooperative could purchase it in their names for a \$.05 fee per bushel while crediting their accounts for having fulfilled their requirement. Eventually, the company discontinued this requirement and bought durum as cheaply as possible, most likely Canadian durum, from an elevator in Carpio, ND and had it delivered by unit trains to the plant in Carrington. Some members believed that management did not want to bother with individual members delivering durum to the plant in Carrington and preferred instead to deal with unit-train delivery. Consequently, the company incurred a \$7 million IRS penalty on non-member patronage. The board of directors tried to pass this off as a part of the cost of conversion, but it was a problem of the management's own creation. Had there been a provision in the bylaws permitting a minority to question management practices and to call for a third party performance audit and review, the practice might have been caught early on and the penalty would not have been necessary. Had there had existed such a provision in the Dakota Growers Pasta Company bylaws, the company would not have found itself in the position of purchasing an estimated 80 to 90 percent of its durum on the open market from non-patrons.

Dakota Growers Pasta Company was organized under the 1933 and 1934 Securities Acts, which exempted defined cooperatives from provisions of these acts. The main reason for these exemptions was that members' investment in cooperatives was for consumptive use. Members' investment was typically in the form of retained patronage dividends, which had been ruled to not be investments because they are eventually returned to patrons without interest earned or appreciation in value. In the case of new generation cooperatives, members contribute equity by purchasing delivery shares that are also exempted under the securities exemption. With cooperative conversion, some have proposed that when exempted, non-secured delivery shares in the

cooperative are converted to secured, speculative shares in a C-Corp., such converted shares should be subject to a penalty in recognition that the equity raised in a cooperative for one purpose has been converted in a corporation to another purpose. Otherwise, there is nothing to stop any company from deliberately organizing under the guise of a cooperative in order to raise equity from patrons, only to later convert to a corporation. A penalty on such converting shares might discourage such conversions.

Finally, as the agriculture commission noted, conversion of Dakota Growers Pasta Company raised serious policy questions of the prior financial assistance provided by the State of North Dakota to the company as well as to individual members. The prior appropriation of public funds to the company was to realize a public purpose of encouraging economic development that would provide collective benefits to the state as well as private benefits to cooperative members. With conversion the benefits would now accrue to individual non-resident, non-producer shareholders. Several examples of state assistance to Dakota Growers Pasta Company included the Bank of North Dakota's Coop Equity Loan Program and its AgPace Program. The Coop Equity Loan Program assisted producers in purchasing shares of stock in new generation cooperatives. The interest rate on this loan program was the bank's base rate less one percent. The AgPace (Agricultural Partnership in Assisting Community Expansion) interest rate buy-down program of the Bank of North Dakota was authorized to make loans up to \$500,000 maximum per member to assist them in purchasing equity shares in a value-added processing facility.

Two members of the board of directors took maximum loans of \$500,000 to assist them in purchasing shares in Dakota Growers Pasta Company. Some members suggested that now that the company has been converted, as a matter of conscience those members who benefited from Bank of North Dakota programs should repay with interest the loans they received. Should the com-

pany convert to a corporation, the agriculture commissioner seemed to imply such a possibility might be incorporated into policy.

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