



2023 INAUGURAL

INVESTING *in*
MONTANA

RAISING CAPITAL & FINDING
INVESTMENT OPPORTUNITIES

COMMISSIONER OF SECURITIES & INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR



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Welcome

JUNE 27, 2023



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BUSINESS MODELS & NETWORKS



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Counsel



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President/CEO,
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U.S. Small Business
Administration



LIANE TAYLOR
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MITCH STALEY
Communications
Director,
Department of
Commerce



**TRACY
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Executive Director,
Montana
Cooperative
Development Center



U.S. Small Business
Administration



U.S. Small Business
Administration

Montana District Office

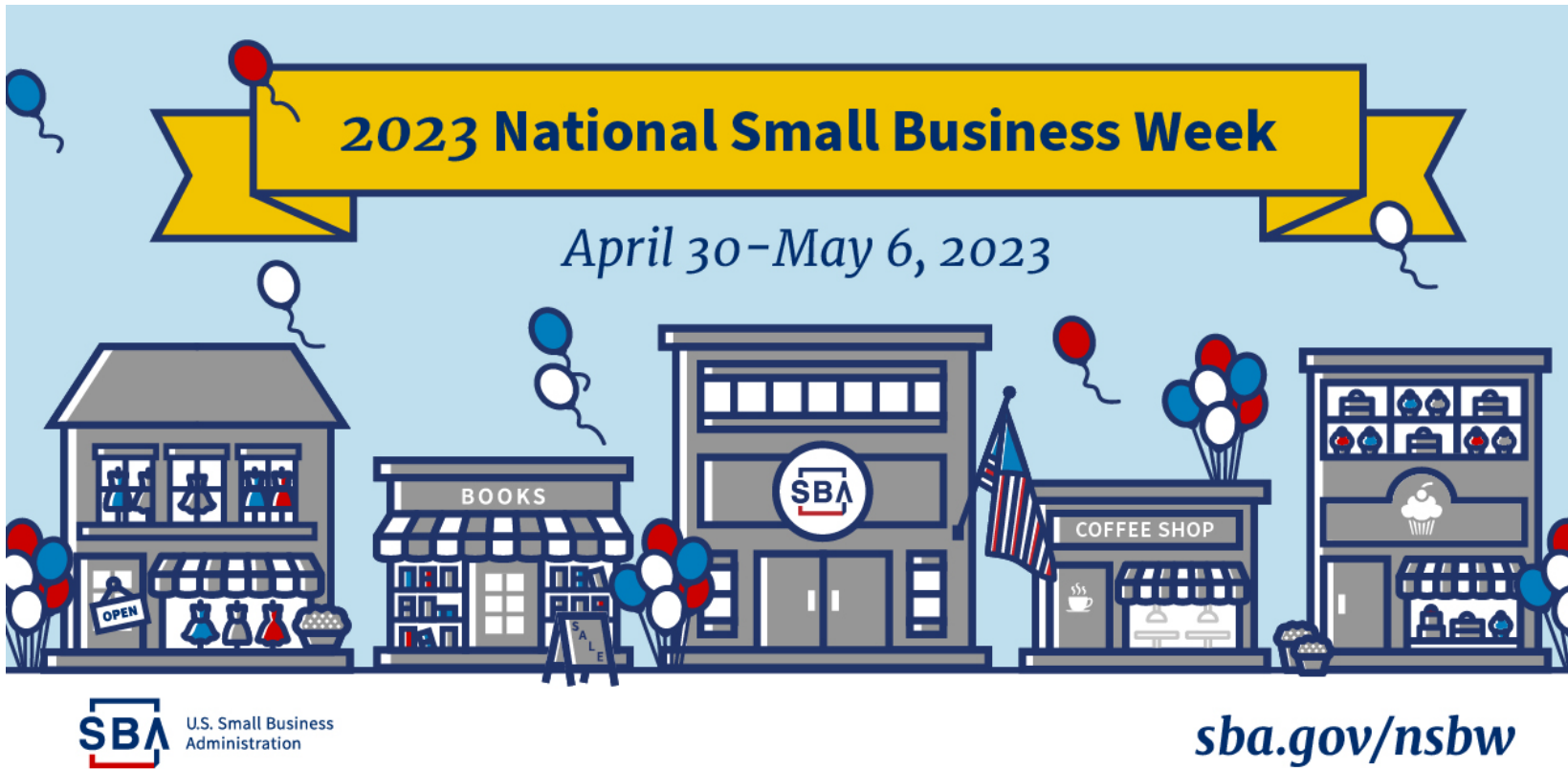
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The SBA Awards given in celebration of National and District Small Business Week include the following awards:

Montana District Small Business Week Categories

- **Small Business Person of the Year (National and District)**
 - **Small Business Exporter (National and District)**
 - **Woman-Owned Small Business**
 - **Veteran-Owned Small Business**
 - **Young Entrepreneur-Owned Small Business**
 - **Small Business Champion**
-
- To obtain additional information or receive a copy of the National/Montana District Nomination Guidelines, please contact lorena.carlson@sba.gov.
 - www.sba.gov/nsbw

Small Business Persons of the Year

Winner:

Neli and Dimitar Nikolov

Business:

The Corral Burger and Lodge

Location:

Gardiner, MT



Small Business Exporter of the Year



Winner:

Michelle and Matthew Hertel

Business:

Penta Machine Company

Location:

Belgrade, MT

Veteran Owned Business of the Year

Winner:

Willie Blazer

Business:

Willie's Distillery, Inc.

Location:

Ennis, MT



Women Owned Business of the Year



Winner:

Shellie Mitchell & Aimee Myles

Business:

Shellie's Country Café, Inc.

Location:

Helena, MT

How we help small businesses

- **Free Business Counseling**
 - Get business advice from our partnering organizations and experts.
- **SBA-guaranteed Business Loans**
 - Start or expand your business with loans guaranteed by the SBA.
 - [Loans \(sba.gov\)](https://www.sba.gov/loans)
- **Federal Government Contracting**
 - Learn how to find and win small business government contracts.
 - [Small Business Administration \(sba.gov\)](https://www.sba.gov/small-business-administration)
- **Business (& Home) Disaster Loans**
 - SBA provides low-interest disaster loans to help businesses and homeowners recover from declared disasters.
 - [Disaster assistance \(sba.gov\)](https://www.sba.gov/disaster-assistance)

SBA Resource Partners

Provide business consulting, mentoring and training services



- **Montana Small Business Development Center Network**
 - <https://sbdcmontana.gov/>
- **SCORE**
 - Bozeman: <https://bozeman.score.org/>
 - Billings: <https://billings.score.org>
 - Western Montana: <https://westernmontana.score.org>
- **Montana Women's Business Center**
 - <https://www.prosperamt.org/womens-business-center/overview>
- **Women's Entrepreneurship and Leadership Lab**
 - <https://www.umt.edu/passion/>
- **Montana Veterans Business Outreach Center**
 - <https://bigskyvboc.org/>

COOPERATIVES IMPACTING MONTANA



Tracy McIntyre, Executive Director
Montana Cooperative Development Center
www.mcdc.coop

WHO IS THE MONTANA COOPERATIVE DEVELOPMENT CENTER

Mission: To promote and develop cooperatives to meet the economic and community need of Montana.

We serve all 56 counties and the 7 Native American Reservations as the statewide recognized cooperative development center.

We are an economic development organization utilizing the cooperative business model to address needs of communities, businesses, and individuals of Montana (and beyond).



WHAT IS A COOPERATIVE:

It is, in simple terms, an enterprise created by a group of people who join forces and work together to solve a problem or reach a goal they all share.





Cooperatives' Impacts are Across the Globe!

Co-ops Are:

- Global form of business
- State controlled
- All adopt the 7-guiding principles

As per the International Cooperative Alliance:

3 million co-ops world wide

- 1.2 billion in membership
- 12% of people on Earth are co-op members –Brazil has the most cooperatives

Co-ops employ 280 million people across the globe- that is 10% of the worlds populations

72% of co-ops survive the first 5 years of operations vs. 43% of companies



**MONTANA
COOPERATIVES
DIRECTLY
CONTRIBUTE OVER
\$1.6 MILLION IN
FAMILY INCOMES**

Montana Bureau of Business and Economic Research



**Montana Bureau of
Business and
Economic Research**

**MONTANA
COOPERATIVES
PROVIDE 24,752
JOBS IN THE
STATE**

“

*Montana Cooperatives provide an
economic output of \$7.1 billion
annually in the State.*

MONTANA BUREAU OF
BUSINESS AND ECONOMIC
RESEARCH



COOPERATIVES' ECONOMIC IMPACT TO MONTANA

A COOPERATIVE IS:

- Membership Owned

- As a co-op owner, you are concerned with not only about the financial situation of the enterprise but also if the cooperative is meeting the needs of its member-owners.
- You are not only a customer/user you are owner.
- Equal ownership across all owners.
- A cooperative can never have one member (or shareholder) in control.

- Membership Benefits

- Cooperative are designed to address the need of the members first and foremost.
- Should always strive to make as much money as it spends.
- Profits (if any) are distributed to members dependent on how the cooperative is performing any given year.

- Membership Controlled

- Participation in the decision-making is one of the primary ways cooperative members exercise their right of ownership.
- Co-ops are led by members-elected board of directors.
- One vote for one member always.
- The Board of Directors provide the governance and often the hired staff provide the management.
- The Board works based on the memberships' feedback and engagement at annual meetings.

Cooperatives are autonomously owned by their Members.

Co-ops are capitalized by Members first and foremost.

Common Stock:

- Has voting rights
- Return on amount of usage of the cooperative (patronage)
- Can run for and elect leadership
- Has active voice in management of the business
 - Part of the Democratic ownership
- Should be supportive and engaged

Preferred Stock:

- Non-voting
- Investment Opportunity (wants to see the co-op succeed)
- Receives “dividend” first if co-op is profitable
- No additional ownership

Cooperatives Can:

- Create other cooperatives
- Partner with other businesses and cooperatives
- Own other businesses
- Incubate other businesses
- Receive tax benefits compared to other corporations

Cooperatives Cannot:

- Be owned by another corporation/business/entity
- Complete major changes without membership approval

MONTANA COOPERATIVES ARE INCORPORATED UNDER SECTION 35 OF THE MONT. CODE ANN. (MCA)

**Cooperative Association
(for profit)-Chapter 15**

Housing Co-ops

**Agricultural Association
(not-for-profit)-Chapter 16**

Must file for the nonprofit
exemption

**Cooperative Agricultural
Marketing Association
(not-for-profit)-Chapter 17**

Must file for the nonprofit
exemption

**Cooperative Utilities
(not-for-profit)-Chapter 18**

Electrical and
Telecommunications

**In other states,
cooperatives are most
commonly formed as
nonprofit corporations
with exempted stock.**

Additional codes for out of state cooperatives and credit unions

WHAT IS AN INVESTMENT COOPERATIVE?



An Investment Cooperative is a for-profit co-op, made up of local community members, who identify businesses, projects, or causes into which they choose to invest as a co-op.



Investment Cooperatives are a new and innovative model for rural and urban economic and business development that effectively bridge the gap between local investors and local ventures in need of financing.



Investment Cooperatives are a cost-effective, community-owned, and controlled impact fund.



Investment Cooperatives enable residents to become accountable partners in locally-driven economic development, which leads to healthier and more sustainable communities and economies. In other words, local money won't be invested in stocks and mutual funds, but more importantly, in local projects and people.



Planning for Succession through Cooperatives?

- Cooperative Conversions:
 - Essential businesses like grocery stores to community ownership
 - Converting to worker-owned to preserve company after retirement
 - Building out a worker-owned company for sustainability
 - Creating alternative revenue streams through
 - Membership Loans
 - Preferred Stock



HOW DOES MCDC WORK?

Listen



Facilitate



Train



Build



PHASES IN FORMING A COOPERATIVE



- Exploratory: Will A Cooperative work for your community/need?
 - Host an introduction meeting with Interested Parties
- Planning Phase:
 - Form a Steering Committee
 - Identify the actual need - feasibility
 - Build a business plan and DRAFT by-laws
- Legal Phase:
 - File with Secretary of State and Montana Securities Department
 - Blue Sky Exemption
 - Obtain subscription pledges
- Operational Phase:
 - Collect the \$\$ from members
 - Begin operations

CONTACT US!

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- Davey Madison, Program Director (all types)

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- Nicole Borner, Co-op Specialist (investment, housing, hybrids)

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- Sophie Nelson, Equity Manager (Native American and Women-led)

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SMALL BUSINESS & STARTUP EXPERIENCES



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TROY DOWNING
Commissioner of
Securities &
Insurance, Montana
State Auditor



CHAD ZEITNER
CEO/Co-Founder,
Montucky Cold
Snacks



**MARK
RANALLI**
President/CEO,
BioSqueeze, Inc.



COLE MANNIX
Founder & President,
Old Salt Co-op



**KELLI
SCHERMERHORN**
Vice President,
Butte Food Co-op

OLD SALT CO|OP

A rancher-owned meat company providing Montana-raised and processed meats for customers who care about enhancing soil, water and wildlife.

Ranches ... more to come!

LF Ranch, Rocky Mountain Front



J Bar L Ranches, Centennial Valley



Mannix Ranch, Blackfoot Valley



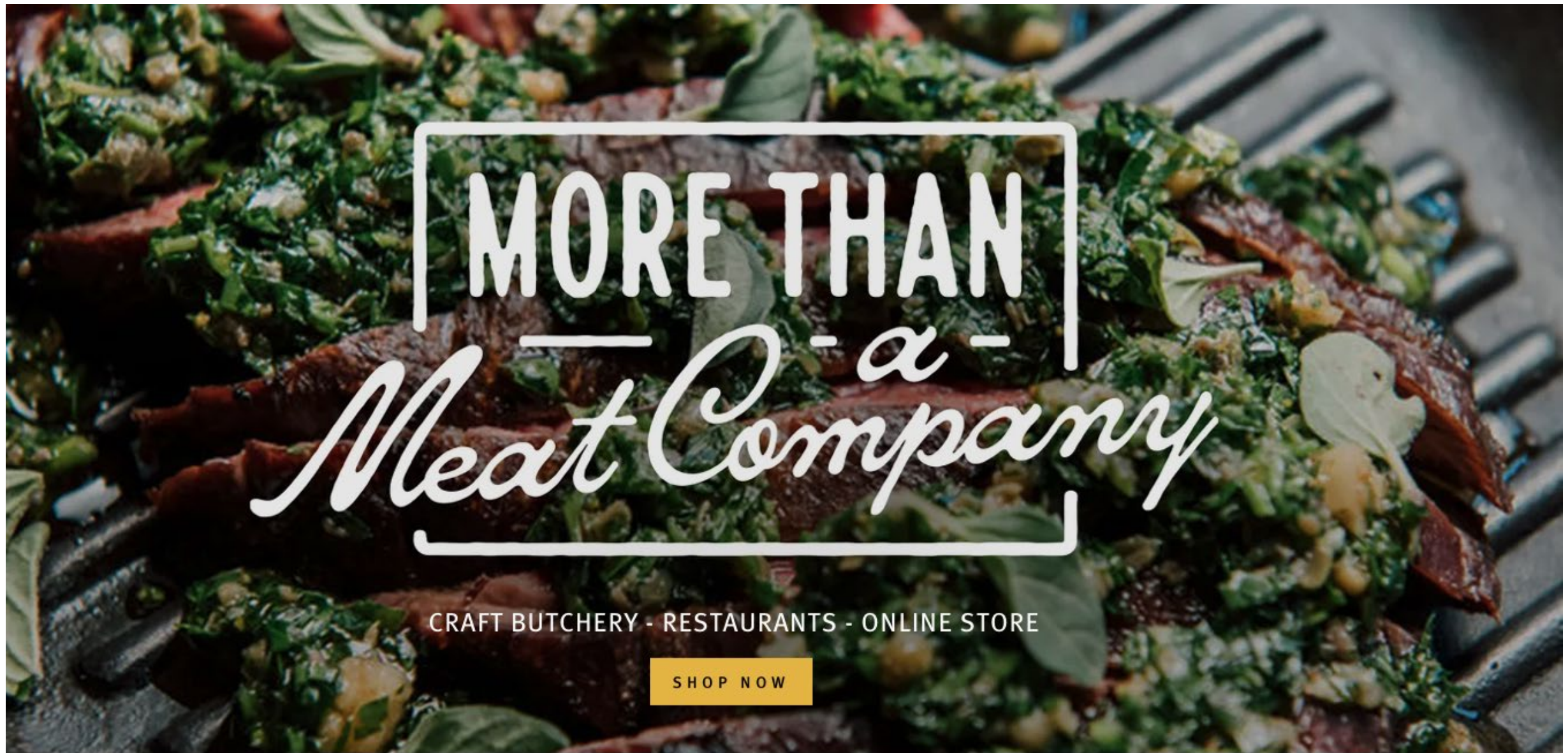
Sieben Livestock Co, Chestnut Valley



People



Old Salt employs 24 people, increasing to 60 within two years; learn more about [the core team here](#).



A quick tour of our vertically integrated meat company:

Quality Beef, Lamb, Pork sold online



Specialty products you can't find elsewhere.





Existing Cut & Wap Facility - USDA ready by fall '23



USDA Slaughter Facility at Valley View, East Helena

Designed with Callicrate Manufacturing; Operational fall 2023



Stellar fast casual restaurant operational since Oct '21



A Montana food and music festival celebrating
Ranching and Wild Landscapes

Wood-fired cooking | Western Music & Art | Conservation

INTRODUCING



JUNE 23-25TH

HOSTED BY

Old Salt Co-op on the Mannix Family ranch near
Helmville in Montana's Blackfoot Valley

2,000 people over 3 days and 2 nights of camping

The Union Market & Grill

By Old Salt Co-op

*A charcoal fired grill and meat market in
downtown Helena, coming winter 2023-2024*



Capitalization

To date: Old Salt Co-op, LLC has raised:

- \$2.3 million in private capital via revenue-based financing and Class C Preferred Interest
- \$6,350,000 in debt commitments from Steward Lending LLC and Great Falls Development Authority via USDA Meat Processing Intermediary Lending Program
- Aim to raise another \$750,000 by fall 2023 in Class C Preferred Interest

Class C investors receive:

- Principal back with 6% IRR; after being paid back with interest, they share in profit according to original principal invested divided by \$7,500,000 valuation



Let's leave it better.





- ▶ Organized & registered as a MT Cooperative
- ▶ Owned by our 864 member-owners, who elect BOD and vote on significant decisions
- ▶ Currently formulating capital plan - traditional financing is limited
 - ▶ Strong success with grants, but you can never have enough money!
- ▶ Highly skilled BOD with ability to leverage resources; bandwidth challenges

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)

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BRETT OLIN
CSI Deputy
Securities
Commissioner



RONAK PATEL
Principal Attorney,
Bressler, Amery &
Ross



**ERIN
MCCRADY**
Partner, Dorsey &
Whitney, LLP

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)

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What is a security? And who regulates securities?

- Mont. Code Ann. § 30-10-103(24)(a)
 - What we would expect (stocks, bonds, transferable shares, subscription agreements, certificate of deposit, etc.)
 - What we might not expect (commodity investment contracts, collateral trust certificates, preorganization certificates, oil and gas leases with payouts, etc.)
 - Some vague words fleshed out by the courts (investment contract, evidence of indebtedness, notes, etc.)

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The definition of an investment contract
“...embodies a flexible rather than a static principle, on the that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.”
SEC v. Howey, 328 U.S. 293, 298 (1946)

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)

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What is an investment contract?

In 1979, Montana adopted Supreme Court precedent as articulated in *Housing Foundation, Inc. v. Forman*.

- 1) An investment, with
- 2) an expectation of profits, from
- 3) a common enterprise, which depends on
- 4) the efforts of others.*

**Duncan clarified that in Montana, the efforts need not be solely of others, but also included the managerial or entrepreneurial efforts of others, a position the U.S. Supreme Court took in Housing Foundation, Inc. v. Forman in 1975.*

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Promissory notes

Who is the issuer?

What is the pitch?

What is the duration?

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**Remember, every security must be
registered...unless there is an exemption.***

§ 30-10-104: Exempt Securities

§ 30-10-105: Exempt Transactions

§ 30-10-201: Registration provisions

*Just because there is an exemption from registration, does not mean there is an exemption for from the antifraud provisions of the Montana Securities Act.



Securities Fundraising & Investing

Erin McCrady
Partner, Corporate Finance and M&A
Dorsey & Whitney LLP
Missoula, Montana

June 2023

Founder Equity

Founders should agree upon and document equity ownership up front.

- helps avoid disputes later
- tax considerations

Type of Founders equity depends on the type of entity – corporation, LLC, partnership, etc.

Typical securities issued to Founders:

- common stock (restricted; subject to forfeiture)
- LLC units
- partnership units

Founder Equity

Document equity ownership in written board resolutions.

Founders may also want to agree upon variety of other governance and shareholder matters:

- board composition
- transfer restrictions
- voting rights/blocking rights
- what happens upon sale of the company

Equity does not need to be granted to every person but often if there is no cash for salaries equity is the only form of compensation.

- consider stock option plan for consultants/employees/directors/advisors
- consider tax impact

Investors

Typical securities issued to investors:

- common stock (or LLC/partnership units)
- SAFEs (simple agreement for future equity)
- preferred stock
- convertible notes

Investors may request corporate restructuring. Consider tax impact to Founders.

Investor documentation:

- amendment to certificate of incorporation (or operating agreement/partnership agreement)
- equity purchase agreement
- various shareholders agreements

Other essential first steps for issuer to determine:

- federal securities exemption
- state blue sky registrations/exemptions

Common Federal Securities Exemptions

4(a)(2) of Securities Act of 1933: “private placement exemption”. Factors to consider:

- **Number of investors:** Fewer number of investors in an offering makes it less likely to be a public offering.
- **General solicitation and advertising:** If the offering is advertised to the public, it is more likely to be considered a public offering. Email blasts, social media posts, etc.
- **Existence of transfer restrictions on purchased securities:** The fact that securities are subject to restrictions provides further evidence that this is less likely to be a public offering.
- **Investor intent with regard to purchased securities:** Evidence that investors intend to quickly sell purchased securities make it more likely that the sale of securities is a public offering.
- **Integration with other offerings:** Issuer conducting a series of offerings suggests that the sale of securities are more likely to be a public offering.
- **Whether the investors are suitable for the offering:** If the investors are sophisticated or knowledgeable about the investment, the less they need protection associated with public registration.
- **Information provided to investors:** The more information provided, the less they need protection associated with public registration.

Common Federal Securities Exemptions

Regulation D (Rules 501 through 508 of Securities Act of 1933): private placement safe harbors—satisfaction of conditions ensures that there has not been a public offering:

- Rule 504 – \$10 million cap over 12-month period; no general solicitation allowed
- Rule 506(b) – no dollar cap; unlimited accredited investors and up to 35 non-accredited investors; no general solicitation allowed
- Rule 506(c) – no dollar cap; accredited investors only (verification required); general solicitation allowed

Each rule has different requirements and restrictions with respect to:

- “bad actor” disqualification
- information required to be provided to investors

File Form D with SEC within 15 days of first sale.

Failure to comply with Regulation D does not mean that the offering is not exempt under another exemption, including Section 4(a)(2).

Blue Sky

Exemptions provided under Rule 506 of Regulation D provide blanket exemption from registration requirements under state-level blue sky laws.

- No blanket exemption to for offerings pursuant to Section 4(a)(2) or Rule 504 of Regulation D.

Without a blanket exemption, there will typically be state-level restrictions on the sale of securities.

- every state has its own registration requirements and/or exemptions
 - look at state where issuer is located
 - look at state where each investor is located
 - Montana: MCA 30-10-104 and 105

Important to engage with corporate securities counsel when issuing securities.

Accredited and Non-Accredited Investors

- Accredited Investors (defined in Rule 501) include:
 - Institutional investors, such as banks, broker-dealers, insurance companies, investment companies
 - Corporations or trusts with assets in excess of \$5 million and not formed for purpose of making the investment
 - Directors and officers of the issuer
 - Individuals possessing certain professional credentials demonstrating background and understanding in the areas of securities and investing
 - Individuals with
 - Income > \$200,000 or joint income > \$300,000
 - Net worth or joint net worth > \$1 million (cannot include equity value of primary residence)
 - Entity in which all equity owners are accredited investors
 - Knowledgeable employees of private funds
- Non-accredited investors (anyone who is not an accredited investor)
 - Sophistication still required – alone or with Purchaser Representative
 - Inclusion increases cost and risk to issuer

Disclosure Obligations

Issuer's disclosure obligations depend in part on whether investor is accredited or non-accredited.

- Accredited investors – disclosure not mandated
- Non-accredited investors – Regulation D requires:
 - Non-financial information of the same kind required in Part I of a registration statement filed under the Securities Act
 - Financial statements prepared in accordance with GAAP (varies based on size of transaction)

Anti-fraud rules apply regardless of investor status.

- Rule 10b-5 – It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange (a) to employ any device, scheme, or artifice to defraud, (b) **to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading**, or (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Disclosure Mechanics

Private placement memorandum

Investor presentation/slide deck

Oral conversations

On-site visits

Customer interviews

Written responses due diligence questions

Common Due Diligence Topics

- Business operations/competitive landscape
- Financial statements and operating budget
- Organization of the company
- Ownership and control of the company
- Assets and operations
- Intellectual property
- Legal and regulatory matters
- Litigation and disputes
- Material contracts and commitments
- Employee and independent contractor matters
- Tax matters
- Intended use of investment proceeds

Resale

Securities sold under Section 4(a)(2), Regulation D and most other exemptions are considered restricted securities and cannot be resold without registration with the SEC or qualification under another exemption.

- Various exemptions federal and state may be available

Resale may also be limited by terms of shareholder agreements requiring:

- Advance notice to Company and other equity owners
- Right of first refusal, including at pre-negotiated price
- Tag-along/co-sale rights
- Restrictions on sales to competitors

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Private Funds

- What is a “private fund”?
- What does it take to set-up a private fund?
- Which securities laws apply and when are they implicated?

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What is a “private fund”?

- When to wonder if PF considerations implicated: An entity used for the purpose of making one or more investments.
- Common types:
 - Hedge funds
 - Private equity funds
 - Operating companies
 - Real estate
 - Venture capital funds
- More technical: A entity that would be an investment company but for an exclusion from the definition of an “investment company.”

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Entity formation

- Type of investment(s) to be made
- Future plans
- Tax considerations
- Manager
- Compensation plans

Capital!

- Timing of when needed can play role in formation stage

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Which securities laws apply and when implicated?

- Investment Company Act of 1940
- Securities Act and Securities Exchange Act/State Securities Laws
- Investment Advisers Act of 1940/State Securities Laws
- Financial Regulatory Authority (FINRA) Rules

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)



Investment Company Act of 1940

- Basic issue is that if your investment entity is an “investment company,” various registration and reporting requirements would be implicated immediately.
- There are key exclusions from the definition of an “investment company.”
 - 3(c)(1) – Entity with 100 or less beneficial owners (other than “knowledgeable employees”)
 - 3(c)(7) – “Qualified purchasers” exclusively
 - Other examples
 - 3(c)(5) – real estate
 - 3(c)(9) – oil & gas/mineral
- When do you need to be thinking about the Investment Company Act?
 - Not just when your entity is *making* an investment.

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)



Securities Act/Exchange Act/State Securities Laws

- Raising capital for the entity
- Securities Act/State laws – Securities registration/exemptions and standards applicable to entity for which the capital is being raised
- Exchange Act/State laws – Securities registration/exemptions and standards applicable to the persons involved in/methods of capital formation

CAPITAL FORMATION FROM A LEGAL PERSPECTIVE (1 CLE)



Exchange Act/State laws/FINRA rules

- Utilizing persons for the purpose of raising capital
 - Compensation is not essential element
- When is someone a “broker” or “dealer”
 - Federal considerations
 - State laws implicate various definitions and interpretations of common definitions
- Consider implications of FINRA rules if relying on FINRA member broker-dealer

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Investment Advisers Act/State laws

- Advising a third-party as to the advisability of investing in “securities” and receiving compensation for doing so
 - What is a “security”?
- Must still consider even if only one investment to be made and it is identified as part of capital raising.
- Registration and exemption considerations
 - A key exemption: “Exempt Reporting Advisers”
- Common forms of compensation
 - Fixed/percentage-based fee
 - Sharing in capital gains of the fund entity
 - If carried interest involved – have to address “qualified client” standard

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“What is the big deal, Jack and Jill are doing the same thing without any of these burdens!”

- Civil consequences
- Regulatory consequences
- Criminal consequences

PRIVATE EQUITY



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**KARL
UNTERSCHUETZ**
Outreach &
Engagement
Manager,
Accelerate MT



**DR. JENNIFER
ISERN**
CFA/CEO, Catalyze
Global Impact, LLC



**PHILIP
BRITTAN**
Vice President,
Google



**GRAHAM
CONRAN**
Executive Director,
Frontier Angels



LIZ MARCHI
Head of
Community
Engagement,
Two Bear Capital



LES CRAIG
General Partner,
Next Frontier Capital



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