

Chapter 8

The “Multi-Year CSA” Financing Model

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For purposes of this guide, a “multi-year CSA share” is any Community Supported Agriculture membership share or subscription that enables the purchaser or customer to pre-buy food produced during more than one growing seasons. These shares can be bought for a substantial amount of money, for example one thousand to ten thousand dollars or more, simply due to the extended timeframe for producing these shares’ worth of food and the fact that the volume of food purchased can be much higher than one would consume in a single three-month growing season.

Multi-year CSA shares can be construed as “investments” or securities, and farmers need to be careful when offering these kinds of CSA memberships. To lessen the risk of the transaction being classified as a security and, in turn, avoid the requirements for registering with state and federal authorities, the farmer should make clear that the CSA share is being sold as a method for pre-buying and selling food and/or services, and **not a method for investing in the farm operation for purposes of the investor gaining a profit. See the text box in Chapter 1 entitled, “Are CSA Shares Securities,” for more information on what factors might make it likely for the transaction of CSA shares to be considered by the federal or state securities regulators as a securities transaction.**

Here are some other considerations for selling multi-year CSA shares to customers:

- To entice customers to buy larger CSA shares or those with more extended time frames, farmers might offer bonuses of food when these types of shares are purchased. To lessen the possibility for the transaction to be considered a security, the farmer can refrain from offering “returns” or “gains” or “profits” on top of the money used by the customer to purchase the share. Instead, emphasize that a **discount** will be given on food pre-purchased. Similarly, a **bonus** can be given, as long as its amount is fixed, predefined and will be given in the form of a product or service.
- Farmers often underestimate the amount of time it takes to converse with purchasers of multi-year CSA shares. These customers feel like they are taking a stake in the operation, and they are in a sense. This can be beneficial for all involved, but the farmer should expect questions that are not ordinarily fielded. One idea is to have a special “openhouse” for those interested in purchasing multi-year CSA shares to address common concerns and brainstorm about positive ideas.
- When uncertain about the way in which an “offering” or solicitation to potential multi-year CSA shares should be written, consult the advice of a qualified licensed attorney. A small amount of cash to do this might save a much larger hassle down the road.
- Special benefits can be offered to coincide with the purchase of multi-year CSA shares. For example, these shareholders might get first dibs on a specialty crop or first chance to place orders for bacon once the farm animals are processed. Members can be offered discounts on other on-farm events, such as music or barbeques. Offering these benefits as services purchased with membership fees will not likely trigger securities registration.⁴⁵ For more information, see the section entitled, “Are CSA Membership Shares Securities?” in Chapter 1 of this guide.
- Is there a refund policy? In a multi-year CSA, it is much more likely that a customer will need to terminate their membership or subscription, for example due to a sudden move out of town or change of other circumstances. One option for the farmer is to offer a total refund on demand, or there can be a policy set in place that does not allow a refund unless the customer notifies the farmer before a specified date prior to the start of each growing season. Another variation would be to prorate the refund depending on when it was requested during the year. The farmer can charge a cancellation fee equal to production costs in cases where goods have already been produced and these costs need to be covered. There are many options with varying appeal to the customer, but the farmer needs to choose a refund policy that meets both the farmer’s and customers’ needs.

Memberships

In terms of reducing the likelihood securities laws and regulations will apply, another way to think about and structure multi-year CSAs is to create “memberships” or “subscriptions” in the farm or agricultural business. These would be structured like a club membership as opposed to owner memberships. The farm could create different levels of membership or subscription with different benefits. One level could be a three-year membership that entitled the member to a certain amount of food product per month, like a regular CSA. Another level of membership could add discounts for farm social events or specialty product. This could be flexible by benefit and /or number of years allowing for accumulation of capital for the farm and an extended period of time for exercising the membership benefits.

In order for a membership structure to avoid the likelihood of being characterized as a security, the farm or agricultural business entity would need clear membership documentation that specifies:

- 1) the benefits of membership;
- 2) that the member should not expect any profit, financial gain or appreciation from their membership over time;
- 3) that the memberships are not transferable or tradable in any open market;
- 4) that the members are not entitled to ownership or voting rights;
- 5) that the membership is intended to provide the member with the use of consumable product, services provided by the farm or food business and/or other social benefits; and
- 6) that the membership fees are not going to be used primarily for investment in the start-up of the business.

45 JA Blomberg and HE Forcier, 2005. But is it a security? Business Law Today, Volume 14, Number 5. <http://apps.americanbar.org/buslaw/blt/2005-05-06/forcier.shtml>. Accessed online 1/10/12.