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DIRECTOR

STATE OF IDAHO
DEPARTMENT OF FINANCE
700 W. STATE STREET, 2ND FLOOR
P. O. BOX 83720
BOISE ID 83720-0031
Website: http://finance.state.id.us

June 9, 2004

[redacted]

Re: [redacted]
Your File No.: 70.532

Dear [redacted]

This is in response to your May 6, 2004 letter requesting this Department take a "no-action" position with regard to the offer and sale of Common shares, Class A shares and Preferred Rebate notes to members of [redacted].

It is our understanding that [redacted], which operates essentially as a purchasing cooperative, is a dealer-owned wholesaler of hardware and related products to retail hardware dealers. [redacted] members almost exclusively hold the stock of [redacted]

We believe that the shares and notes issued by [redacted] are securities. However, due to the unique characteristics and limited nature of the offering, as set forth in your letter, we are persuaded that there is sufficient justification to warrant our taking a "no-action position" with respect to [redacted] limited offering. In reaching this position, we note in particular that: 1) the offering is limited to member/franchisee parties, 2) no dividends are paid on the Common Shares, Class A shares, or Preferred Rebate Notes, 3) shares may not be hypothecated, pledged or assigned, and 4) the transfer of [redacted] Common shares, Class A shares and Preferred Rebate Notes by a member is restricted pursuant to the Bylaws of [redacted], and there is no market for any of [redacted]'s Shares.

Furthermore, it appears that the offering may qualify for the limited offering exemption provided by Section 30-1435(1)(i) of the Idaho Securities Act ("Act"). Availability of the exemption is conditioned upon the issuer making ten or fewer offers in this state during any period of twelve consecutive months, paying no commissions or similar remuneration to solicit purchasers, and determining that investors are purchasing for investment intent. Based on your representations, it appears that the offering satisfies each of these conditions.

In light of the above, we will recommend to the Director that no enforcement action be taken if [redacted] offers its shares and Preferred Rebate notes in this state without benefit of registration. Please be advised that this "no-action" position is based solely on your representation of the facts and different facts may require a different conclusion. This response only expresses the Department's position as to the securities registration requirements and does not alter [redacted] obligation of full disclosure and compliance with the antifraud provisions of the Act.

If you have questions or comments regarding this matter, please contact Nancy Ax or me at 208-332-8004.

Sincerely,

Marilyn T. Chastain

Marilyn T. Chastain
Securities Bureau Chief

(My copy)

May 6, 2004

RECEIVED
MAY 10 2004
DEPARTMENT OF FINANCE

Nancy C. Ax
Securities Examiner
Department of Finance, Securities Bureau
770 West State Street
2nd Floor
Boise, Idaho 83720-0031

Re:
Our File No.: 70.532

Dear Ms. Ax:

Our law firm represents , a dealer-owned wholesaler of hardware and related products to retail hardware dealers, which operates essentially as a purchasing cooperative, with its stock owned almost exclusively by retail hardware dealers who are members of offers membership interests in several states, including Idaho, in accordance with each state's laws governing franchises.

Each member acquires shares of common stock as part of becoming a member or franchisee and acquires Class A Shares and receives Preferred Rebate Notes during the course of its membership as a dealer (cumulatively referred to as "Shares"). The terms of issuance of Shares to its members are summarized below and more fully described in Exhibit G to the Franchise Offering Circular, a copy of which is enclosed as Appendix A:

1. members acquire 69 shares of Common Voting Shares, $10 par value (the only class of voting stock), at $50 per share, with a total subscription price of $3,450, upon becoming a member as part of the franchise fee. No member may acquire additional Common Shares.

2. Each member also agrees as part of the membership agreement with to purchase an indeterminate number of Class A Shares, $10 par value, at a price of $30 per share in an aggregate amount equal to 2% of the member's purchases of inventory from for a period of ten years or until the member has purchased $75,000 (at $30 per share) of Class A Shares. If a member operates more than one retail location, the member is required to purchase up to $37,500 of Class A Shares for each such additional location during the first ten years of its operation. The Class A Shares are non-voting.

3. [redacted]istributes Preferred Rebate Notes, $10 par value per share, in payment of the non-cash portion of patronage dividends made by [redacted] to its members each year. The Preferred Rebate Notes are true interest-bearing promissory notes but are reflected on [redacted]s balance sheet as part of members' capitalization since the Preferred Rebate Notes are subordinated to all debts and obligations of [redacted]. The Preferred Rebate Notes are based on the member's patronage and not on capital contribution, are non-voting and are preferred on liquidation to the Common Shares and Class A Shares of [redacted] There is no other preference for the Preferred Rebate Notes other than upon liquidation.

4. No dividends are paid on the Common Shares, Class A Shares, or Preferred Rebate Notes.

5. The transfer of [redacted]s Common Shares, Class A Shares and Preferred Rebate Notes by a member is restricted pursuant to the Bylaws of [redacted] and there is no market for any of [redacted]s Shares. [redacted] agrees pursuant to its Bylaws, subject to Minnesota law and certain maximum purchase requirements in any fiscal year established by the Bylaws, to repurchase the Common Shares, Class A Shares and Preferred Rebate Notes from any member who stops being a member of United for any reason. The purchase price of each Share is the same price as that at which the member acquired the Shares from [redacted] each Common Share--$50; each Class A Share--$30; and each Preferred Rebate Note--$10. These prices bear no relationship to the assets or earnings of [redacted] and there is no appreciation in value of the Shares as the purchase and redemption prices are arbitrarily established by [redacted] in its Bylaws.

6. [redacted] has an automatic lien on each member's Shares and a right to setoff against the Shares for any indebtedness owed by a member to [redacted] Shares may not be hypothecated, pledged or assigned.

In 1985, we requested a no-action letter from the Securities and Exchange Commission ("SEC") with respect to issuing the [redacted] Shares to members without registration under the Securities Act of 1933 (the "Securities Act") based upon our view that the Common Shares, Class A Shares, and Preferred Rebate Notes issued by [redacted] to its member dealers do not constitute securities within the meaning of the Securities Act, that [redacted] is essentially a buyers' cooperative in which the Common Shares and Class A Shares merely evidence membership, and that [redacted]s Shares do not possess most of the characteristics of a security within the meaning of the Securities Act. In a letter dated April 4, 1985, the SEC agreed with this position. A copy of our original request and the SEC's response is enclosed as Appendix B.

The Idaho Securities Bureau took a similar position in response to a request from a retail cooperative that operates as a distributor of hardware and related merchandise to independent dealers on a wholesale basis (see No Action Letter, Marilyn T. Scanlon, Bureau Chief, July 30, 1997). Although the Securities Bureau concluded the stock issued by the company was a security, it nonetheless determined that due to the "unique characteristics and limited nature of

the offering" a no-action position with respect to that company's stock was warranted. We submit that, for the same reasons, [redacted]'s issuance of Common Shares, Class A Shares, and Preferred Rebate Notes to its members should be exempt from registration under the securities laws of Idaho.

In addition, we note that Section 30-1435(1)(i) of the Idaho Securities Act exempts from registration any transaction pursuant to an offering of securities by the issuer directed to not more than 10 persons in the state during any consecutive 12 month period, provided no commission is paid to solicit purchasers and that investors are purchasing for investment intent. In the above-referenced No-Action Letter, the Securities Bureau concluded that offering satisfied each of these conditions. There are currently two (2) [redacted] franchises in the state of Idaho and we do not anticipate adding ten (10) franchises in any 12 month period. Accordingly, we believe that [redacted] also falls within the specific requirements of this exemption and that on this separate and independent basis the issuance of the [redacted] Shares should also be exempt from registration under Idaho securities laws.

Based on the foregoing, we request an opinion from the Idaho Department of Finance, Securities Bureau, that the Shares are exempt from registration. Enclosed is our check for $50.00 payable to the Department of Finance, State of Idaho in payment of the required fee.

If you need additional material or information in order to respond to our request, please contact the undersigned.

Very truly yours,

[redacted]

[redacted]

Enclosures

[redacted]
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