

OP- 2604.27-074

MOSS & BARNETT

A Professional Association

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May 6, 2004

Fred J. Joseph
Securities Commissioner
Division of Securities
1580 Lincoln, Suite 420
Denver, CO 80203

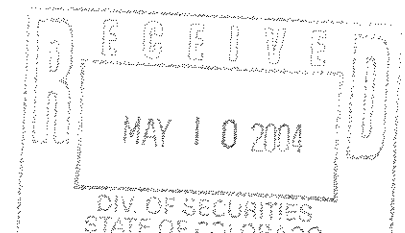
Re: United Hardware Distributing Co.
Our File No.: 70.532

Dear Mr. Joseph:

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

Each member acquires shares of United's 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 United dealer (cumulatively referred to as "Shares"). The terms of United's 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. United's members acquire 69 shares of United's 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 United member may acquire additional Common Shares.
2. Each United member also agrees as part of the membership agreement with United to purchase 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 United 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. United distributes Preferred Rebate Notes in payment of the non-cash portion of patronage dividends made by United to its members each year. The Preferred Rebate Notes are true interest-bearing promissory notes but are reflected on United's balance sheet as part of members' capitalization since the Preferred Rebate Notes are subordinated to all debts and obligations of United. The Preferred Rebate Notes are based on the member's patronage and not on capital contributions, are non-voting, and are preferred on liquidation to the Common Shares and Class A Shares of United. 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 United's Common Shares, Class A Shares and Preferred Rebate Notes by a member is restricted pursuant to the Bylaws of United, and there is no market for any of United's Shares. United 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 United: each Common Share--\$50 and each Class A Share--\$30. Preferred Rebate Notes are redeemed at face value. These prices bear no relationship to the assets or earnings of United and there is no appreciation in value of the Shares as the purchase and redemption prices are arbitrarily established by United in its Bylaws.
6. United 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 United. 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 United 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 United to its member dealers do not constitute securities within the meaning of the Securities Act, that United is essentially a buyers' cooperative in which the Common Shares and Class A Shares merely evidence membership, and that United'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.

We submit that, for the same reasons, United's issuance of Common Voting Shares, Class A Shares, and Preferred Rebate Notes to its members should be exempt from registration under the securities laws of Colorado.

Further, Section 11-51-307(1)(j) of the Colorado Securities Act provides that any security offered by a cooperative association as defined under Colorado Laws, Section 7-56-103(6) is

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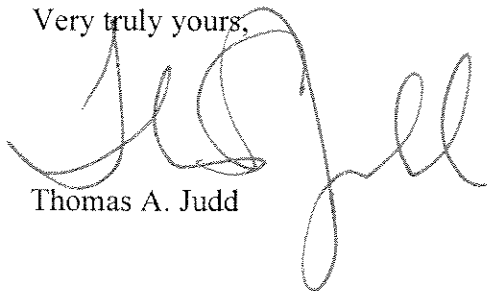
exempt from registration. As noted above, although United is organized as a corporation under Minnesota law, it operates essentially as a cooperative. Accordingly, we believe that the Shares should be exempt securities under Colorado law. The Colorado Division of Securities took a similar position in response to a request from TruServ Corporation (April 9, 2001), which operates as a distributor for True Value, ServiStar, and Coast to Coast hardware stores and has an arrangement with its member-dealers that is similar to the arrangement between United and its member-dealers.

Based on the foregoing, we believe that the Shares should not be required to be registered under Colorado securities laws and respectfully request a confirming no-action letter.

Enclosed is our check for \$100.00 payable to the Colorado State Treasurer 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,

A handwritten signature in black ink, appearing to read 'T. Judd', written over the typed name 'Thomas A. Judd'.

Thomas A. Judd

TAJ/dk

Enclosures

cc: Mr. David A. Heider (w/o Encls.)

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A-04-008

STATE OF COLORADO

Division of Securities

Department of Regulatory Agencies

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Denver, Colorado 80203

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Fred J. Joseph

Securities Commissioner



Bill Owens
Governor

Richard F. O'Donnell
Executive Director

May 14, 2004

Thomas A Judd
Moss & Barnett
4800 Wells Fargo Center
90 South 7th Street
Minneapolis, MN 55402-4129

**RE: United Hardware Distributing Company
Our File Nos. A-04-008 and OP-2004-27-074**

Dear Mr. Judd:

The staff of the Colorado Division of Securities (the "Staff") is in receipt of your letter dated May 6, 2004, along with enclosures, in connection with the above-referenced matter. On behalf of United Hardware Distributing Company ("United"), you have requested Staff's concurrence with your opinion that United's issuance of Shares to its members should be exempt from the registration provisions of the Colorado Securities Act (the "Act").

As we understand the facts set forth in your letter, United is a dealer-owned wholesaler of hardware and related products to retail hardware dealers. United operates as a purchasing cooperative with its stock owned almost exclusively by retail hardware dealers who are members of United.

United's members acquire 69 shares of United's Common Voting Shares (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. Each member also agrees, as part of the membership agreement with United, to purchase Class A Shares at a price of \$30 per share in an aggregate amount equal to 2 percent of the member's purchases of inventory from United for a period of 10 years or until the member has

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purchased \$75,000 (at \$30 per share) of Class A Shares. The Class A Shares are non-voting.

United also distributes Preferred Rebate Notes in payment of the non-cash portion of patronage dividends made by United to its members each year. The Preferred Rebate Notes are true interest-bearing promissory notes, but are reflected on United's balance sheet as part of members' capitalization since the Preferred Rebate Notes are subordinated to all debts and obligations of United.

No dividends are paid on the Common Shares, Class A Shares, or Preferred Rebate Notes. Also, the transfer of United's Common Shares, Class A Shares, and Preferred Rebate Notes by a member is restricted to the Bylaws of United. Further, there is no market for any of United's Shares. United 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 United: each Common Share --\$50 and each Class A Share -- \$30. Preferred Rebate Notes are redeemed at face value. These prices bear no relationship to the assets or earnings of United and there is no appreciation in value of the Shares as the purchase and redemption prices are arbitrarily established by United in its Bylaws.

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

Based on the facts represented in your letter, and without taking a position as to whether issuance of the Common Shares, the Class A Shares and the Preferred Rebate Notes constitutes the "offer or sale of a security" pursuant to the Act, the Staff will not recommend to the Securities Commissioner that formal enforcement action be initiated against United, its principals or members, should the Common Shares, the Class A Shares, or the Preferred Rebate Notes be issued to members of United in

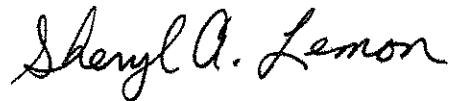
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Colorado without compliance with the securities registration requirements of the Act.

It should be noted that by this letter, the Staff only expresses its position on any enforcement action recommended to the Securities Commissioner, and does not purport to express any formal legal opinion or conclusion on the issues presented. Also, the position taken by the Staff is based on the facts and representations contained in your letter; any change in such facts or representations might require a different response. In addition, this position should not be construed and may not be asserted as setting forth any position with regard to the applicability of the anti-fraud provisions of the Act to the transactions described in your letter.

If you have any questions, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Sheryl A. Lemon".

Sheryl Lemon
Chief Examiner