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MICHAEL B. JOHNSON  
COMMISSIONER

## ARKANSAS SECURITIES DEPARTMENT

November 17, 2006

Ms. M. Elaine Meyers  
Jenkins & Gilchrist  
1445 Ross Avenue, Suite 3700  
Dallas, Texas 75202

RE: Handy Hardware Wholesale, Inc.  
No. 06-90000347-NA005

Dear Ms. Meyers:

The Arkansas Securities Department is in receipt of your request, on behalf of Handy Hardware Wholesale, Inc. ("Handy" or "Company"), that the Arkansas Securities Department ("Department") issue a no-action letter with respect to transactions involved in the proposed plan by Handy to convert from a Texas business corporation to a Delaware corporation operating as a cooperative.

You have represented that Handy is a non-trading, public company that was formed in 1961 and operates as a dealer owned wholesaler for independent retail hardware dealers. Handy is currently organized as a Texas business corporation, but, pursuant to a proposed Plan and Articles of Conversion ("Plan"), will convert to a Delaware corporation and operate as a cooperative.

You further represented that under the current structure of Handy any independent hardware dealer can become a shareholder/member in Handy upon entering into a Member Contract and Subscription for Shares Agreement. Members must purchase 10 shares of Class A Common Stock and may never own more than, or less than, those 10 shares. Members must agree to buy Class B Common Stock and Preferred Stock in an amount based upon each Member's warehouse purchases. Class A Common Stock is the only class of stock with voting rights, thus each Member has exactly 10 votes on matters brought before shareholders. Handy pays annual dividends on its Preferred Stock, but has never paid dividends on its Class A or B Common Stock. Members may not transfer or hypothecate shares of Class A Common Stock without first offering the shares to Handy, but currently there is no prohibition on transfer or hypothecation of class B Common Stock or Preferred Stock. All shares of Handy's stock are purchased from Handy at the price of \$100 per share. If a Member withdraws from membership in Handy, Handy will repurchase its shares for an amount equal to or less than \$100 per share. Handy is not,

and has never been, publicly traded so no known secondary market exists for Handy's stock.

According to your correspondence, the Plan, if approved by Handy's shareholders, will make the following changes to the structure of Handy:

1. Handy will operate on a cooperative basis under Subchapter T of the Internal Revenue code;
2. Handy will convert from a Texas corporation to a Delaware corporation, which includes filing a Certificate of Incorporation in Delaware and adopting bylaws that conform to Delaware law;
3. Handy will change its capital structure by converting all issued and outstanding shares of Preferred Stock into shares of Class B Common Stock on a share-for-share basis and no longer authorizing Preferred Stock;
4. Handy will be prohibited from paying dividends on stock or other distributions of property on stock and distribute only patronage rebates based solely upon a Member's proportionate amount of warehouse purchases by all Members on an annual basis;
5. Handy will prohibit the transfer of any shares of its stock or notes except to Handy and prohibit the pledge or hypothecation of any shares or notes;
6. Handy will terminate registration of its Class A Common Stock, Class B Common Stock and Preferred Stock under both the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended.

It is your position that the stock and notes issued by Handy pursuant to its proposed restructuring plan do not constitute "securities" when viewed through either the *United Housing Foundation Inc. v. Forman* or *SEC v. W.J. Howey Co.* decisions by the United States Supreme Court. Factors included in the *Forman* case analysis include: (i) the right to receive dividends contingent upon an apportionment of profits, (ii) negotiability or transferability, (iii) ability for the stock to be pledged or hypothecated, (iv) conferring voting rights in proportion to the number of shares owned, and (v) the capacity to appreciate in value. *Howey* focused on whether the scheme involved an investment of money in a common enterprise with profits to come solely from the efforts of others. Under neither of these decisions would the proposed stock issuance by Handy be considered "securities" and require registration with the appropriate Federal and State regulatory agencies.

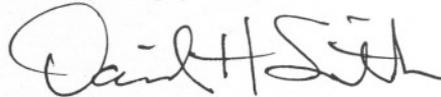
Based upon the representations contained in your correspondence, the Department will not recommend enforcement action to the Arkansas Securities Commissioner if

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Handy converts all issued and outstanding Preferred Stock into Class B Common Stock without registration or exemption under the Arkansas Securities Act ("Act"), and offers, sells and issues its Class A Common Stock, Class B Common Stock, new Class C Common Stock and notes to Members based solely on each Member's patronage of Handy without registration of either the stock or notes or Handy's employees or officers as dealers or agents under the Act.

Please note that the position of this Department is based solely upon the representations made to us in your correspondence and applies only to the transactions identified herein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by this Department and does not purport to be a legal opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "David H. Smith". The signature is written in a cursive style with a large initial "D".

DAVID H. SMITH  
Staff Attorney