

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

1401 MCKINNEY
SUITE 2600
HOUSTON, TEXAS 77010

(713) 951-3300
FACSIMILE (713) 951-3314

www.jenkins.com

Lee Thompson
(713) 951-3342
lthompson@jenkens.com

AUSTIN, TEXAS
(512) 499-3800
CHICAGO, ILLINOIS
(312) 425-3900
DALLAS, TEXAS
(214) 855-4500
LOS ANGELES, CALIFORNIA
(310) 820-8800
PASADENA, CALIFORNIA
(626) 578-7400
SAN ANTONIO, TEXAS
(210) 246-5000
WASHINGTON, D.C.
(202) 326-1500

1933 Act/§2(a)(1)
1934 Act /§3(a)(10)

June 28, 2006

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F. Street, NE, Mail Stop 3010
Washington, D.C. 20549

Re: Handy Hardware Wholesale, Inc.
Commission File No. 000-15708

Ladies and Gentlemen:

This letter amends and is submitted in replacement of our prior submissions dated August 29, 2005, November 3, 2005, January 26, 2006, March 22, 2006, May 18, 2006 and June 23, 2006. This submission includes all exhibits in final form. This letter is a request for a “no-action” position from the Division of Corporation Finance (the “Division”) made on behalf of our client Handy Hardware Wholesale, Inc., a Texas corporation (“Handy” or the “Company”). Handy is a non-trading, public company that is a dealer owned wholesaler for independent retail hardware dealers and is currently organized and taxed as a Texas business corporation. However, pursuant to the proposed Plan and Articles of Conversion to convert from a Texas corporation to a Delaware corporation (the “Plan”) discussed below, as soon as practicable after the request for the no-action is granted and the Plan is approved by the Members pursuant to a proxy solicitation, Handy will operate as a cooperative under Subchapter T of the Internal Revenue Code.

No-Action Request

Based on our opinion that Handy’s Class A Common Stock, Class B Common Stock, Class C Common Stock and notes, in the context and under the facts and circumstances set forth herein, will not be securities within the meaning of the Securities Act of 1933, as amended (the “1933

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 2

Act”), and the Securities Exchange Act of 1934 Act, as amended (the “1934 Act”), and therefore registration is not required under the 1933 Act and 1934 Act, (collectively, the “Acts”), we request that the Division advise us that it will not recommend enforcement action if Handy, pursuant to the Plan:

- (i) converts all issued and outstanding Preferred Stock into Class B Common Stock without registration under the 1933 Act;
- (ii) offers, sells and issues shares of its Class A Common Stock, Class B Common Stock, new Class C Common Stock and notes to Members based solely upon their patronage of Handy without registration under the 1933 Act; and
- (iii) discontinues filing periodic and other reports upon filing of a certification on Form 15 to terminate its registration under Section 12 of the 1934 Act of its Class A Common Stock, Class B Common Stock and Preferred Stock pursuant to Rule 12g-4(a)(1)(i) under the 1934 Act and suspends its reporting obligations with respect to such stock under Section 15(d) of the 1934 Act pursuant to Rule 12h-3(b)(1)(i) of the 1934 Act.

Reason for Request

It is our opinion that the Class A, Class B and Class C Common Stock and notes to be offered in connection with the Plan and the Class A, Class B and Class C Common Stock and notes to be offered subsequent to the adoption of the Plan will not constitute “securities” within the meaning of the Acts and therefore registration is not required under the Acts. As more fully discussed below, although the instruments to be issued by Handy are called “stock” or “notes,” they do not possess the characteristics outlined in *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848 (1975) and *Reves v. Ernst & Young*, 110 S.Ct. 945 (1990) that have been traditionally associated with securities in a business corporation. We believe our opinion is not inconsistent with the position taken by the SEC staff in previous no-action letters, although it is understood that previous requests for no-action that were granted by the SEC were based on individual facts in those letters.¹

¹ Feltus Hardware Inc., SEC No-Action Letter, 1988 WL 235185 (Nov. 9, 1988); Hardware Wholesalers, Inc., SEC No-Action Letter, 1987 WL 108008 (May 26, 1987); Speer Hardware Co., SEC No-Action Letter, 1987 WL 107433 (Jan. 5, 1987); Speer Associated Distributors, Inc., SEC No-Action Letter, 1985 WL 54480 (Sept. 12, 1985); United Hardware Distributing Co., SEC No-Action Letter, 1985 WL 54135 (May 6, 1985); OUR OWN Hardware Co., SEC No-Action Letter, 1984 WL 45162 (April 25, 1984); American Hardware Supply Co., SEC No-Action Letter, 1984 WL 44919 (Jan. 9, 1984); Services Centers Corp., SEC No-Action Letter, 1993 WL 177856 (May 21, 1993) (credit unions); Peer Marketing Associates, Inc. (Feb. 3, 1993) (tobacco and confectionery distributors); Associated Grocers of New England, Inc., SEC No-Action Letter, 1989 WL 246382 (Oct. 5, 1989) (retail grocers); NDS/Basic, Inc., SEC No-Action Letter, 1988 WL 234433 (June 30, 1988) (office supplies dealers); Associated Grocers, Inc., SEC

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 3

I. BACKGROUND

Description of Business

Handy is a purchasing cooperative for independent retail hardware dealers (“Members”) that was incorporated as a Texas corporation on January 6, 1961. Handy’s stock has never been, and is never expected to be, publicly traded. Handy buys merchandise from vendors in quantity lots, warehouses the merchandise and resells it in smaller lots to Members. Handy’s central warehouse and offices are located in Houston, Texas. As of March 21, 2006, Handy had 1,144 active Members located in Texas, Louisiana, Mississippi, Alabama, Florida, Oklahoma, Arkansas, Colorado, New Mexico, and Tennessee, as well as in Mexico and Central America. All of Handy’s shareholders are Members and all of its Members are shareholders.

Current Compliance with the 1934 Act

Handy’s Class A Common Stock, Class B Common Stock and Preferred Stock were originally registered on a Form 8-A filed with the Commission on April 30, 1987, pursuant to Section 12(g) of the 1934 Act. Accordingly, Handy files 1934 Act periodic reports pursuant to Section 13 of the 1934 Act, but is not an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Under Section 13 of the 1934 Act, Handy is current in its reporting obligations and has timely filed all periodic reports required to be filed thereunder for the preceding three years and the portion of the current year preceding the date of this no-action letter. Pursuant to Rule 12g-4, after Handy files with the Commission a certification on Form 15, it will continue to comply with all of its obligations under the 1934 Act for such ninety day period other than its obligations under Section 13(a) and 15(d).

Current Compliance with 1933 Act

Handy filed a Form S-18 with the Commission on March 1, 1982 registering the Company’s stock under the 1933 Act. Since that time, Handy has maintained a succession of 1933 Act registration statements solely covering the sale of stock to Members. Prior to April 30, 2006, Handy’s stock was being offered pursuant to Registration Statement No. 333-124252 on Amendment No. 3 to Form S-2 (the “Registration Statement”). The Registration Statement provided for a continuous offering and was declared effective as of June 17, 2005. The Registration Statement was compliant with Section 10(a)(3) of the 1933 Act and Handy suspended sales of its stock under the Registration Statement on April 30, 2006 (16 months after the date of the audited financial statements contained in the Registration Statement). Since June 17, 2005, Handy has not

No-Action Letter, 1988 WL 233663 (Feb. 12, 1988) (retail grocers); Professional Veterinary Products, Ltd. SEC No-Action Letter (July 12, 1996); Cap Rock Telephone Company, Inc., LEXIS 1994 SEC No-Act (Nov. 4, 1994).

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 4

and shall not through the date of consummation of the Plan: (i) have any other registration statement become effective under the 1933 Act; (ii) update any registration statement pursuant to Section 10(a)(3) of the 1933 Act; or (iii) file any post-effective amendment to its currently effective Registration Statement, other than to file a post-effective amendment to terminate the registration under the 1933 Act of any remaining unsold securities initially registered under the Registration Statement, which such post-effective amendment Handy affirmatively represents that it will file.

II. HANDY'S CURRENT AND PROPOSED STRUCTURES

Current Structure

Currently, Handy is a Texas corporation which issues three classes of stock: Class A Common Stock, Class B Common Stock and Preferred Stock. Any independent hardware dealer can become a shareholder 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 based on purchasing requirements described below. Class A Common Stock is the only class of stock with voting rights (except as Texas law requires class voting, as in the case of amendments to the articles of incorporation if the amendment relates to certain changes to the shares of that class). Thus, each Member has exactly 10 votes on matters brought before shareholders. The total value of Class A Common Stock, Class B Common Stock and Preferred Stock cumulatively purchased by its current Members as of December 30, 2005 is \$1,074,000, \$9,649,700, and \$9,923,725, respectively. 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 there is no prohibition on transfer or hypothecation of Class B Common Stock and Preferred Stock. However, Members rarely transfer, pledge or hypothecate any of the Company's shares. All shares of Handy's stock are purchased from Handy at the price of \$100 per share. Handy is not publicly traded, so no known secondary market exists for Handy's stock. As described below, if a Member withdraws from membership in Handy, Handy will repurchase its shares for \$100 per share.

Proposed Structure

Handy affirmatively covenants to file a proxy statement and Schedule 13E-3 in compliance with the requirements of Regulation 14A and Rule 13e-3 under the 1934 Act in order to solicit shareholder approval of the adoption of the Plan. Among the purposes of the Plan will be to:

- (1) Approve the organization and operation of Handy on a cooperative basis under Subchapter T of the Internal Revenue Code;

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel

June 28, 2006

Page 5

- (2) Convert from a Texas corporation to a Delaware corporation pursuant to Article 5.17 and other applicable provisions of the Texas Business Corporation Act ("TBCA") and Section 265 and other applicable provisions of the Delaware General Corporation law ("DGCL"), which includes filing a Certificate of Incorporation in Delaware and adopting bylaws that conform to Delaware law;
- (3) Change the capital structure of Handy by converting all issued and outstanding shares of Preferred Stock into shares of Class B Common Stock on a share-for-share basis and to no longer authorize Preferred Stock;
- (4) Prohibit the payment of dividends or other distributions of property and distribute only patronage rebates based solely upon a Member's proportionate amount of warehouse purchases by all Members on an annual basis;
- (5) 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) Authorize a new class of stock titled Class C Common Stock, par value \$100, which will only be issued for partial payment of patronage rebates if a Member is underinvested;
- (7) Require each Member to execute a new Member Contract and Subscription to Shares Agreement as approved by the Members at the annual or special meeting; and
- (8) Terminate registration under both Acts of its Class A Common Stock, Class B Common Stock and Preferred Stock.

If the Plan is approved, Handy will file a Certificate of Incorporation in Delaware which will affirmatively state that Handy must operate on a cooperative basis under Subchapter T of the Code. Although neither the Code nor the regulations define "operating on a cooperative basis", the meaning of the term has been the subject of considerable and well settled administrative and judicial interpretation. To meet the definition of "operating on a cooperative basis" the following three criteria must be satisfied: (1) there must be subordination of capital, both as in regard to control over the cooperative undertaking, and as in regard to the ownership of the pecuniary benefits arising therefrom (i.e., the Company cannot declare dividends on capital contributions); (2) the corporation must return its net earnings, defined as net income remaining after tax computed in accordance with GAAP, as patronage distributions, in proportion to the business done by its patrons participating in the cooperative endeavor; and (3) there must be democratic control, meaning that each of the corporation's members has one vote for the election of

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel

June 28, 2006

Page 6

directors.² It is our opinion that the Plan will require Handy, based on the above factors, to operate on a cooperative basis.

If the Plan is approved, Handy will not retain any portion of the net earnings from its business with its Members in excess of what is reasonably determined to be necessary for working capital and reserves for the business. Instead, the Board of Directors will annually declare patronage rebates representing all of the excess of net earnings realized from business done with or for Members over the amount that has been determined to be necessary for working capital and reserves. Handy's main purpose has never been and will not be to provide its members a return on invested capital. For example, in Handy's Form 10-K for 2004, Handy stated that:

“The variation in the Company's earnings per share from year to year results from the Company's commitment to price its merchandise in order to deliver the lowest cost buying program for Members-Dealers, which often results in lower net earnings for the Company.... In 2004, Handy Hardware maintained its financial condition and its ability to generate adequate amounts of cash while continuing to make significant investments in inventory, warehouse facilities, delivery equipment and computer software and hardware to better meet the needs of its Members.”

Thus, Handy will continue, as it has always done, to focus on providing its Members with low cost, quality merchandise to increase its Members' profits rather than its own profits. Handy's net earnings for the fiscal year end 2004 were less than one-half percent of revenues and often net earnings have been less than dividends on Preferred Stock. Moreover, Handy has distributed dividends on Preferred Stock in the amount of \$572,724 and \$524,193 for the fiscal years 2004 and 2003 respectively, while its net earnings after tax and dividends on Preferred Stock were \$547,904 and \$326,884 for the same periods. The five year average for dividends on Preferred Stock for the years 2000 through 2004 was \$562,013 while the five year average for net earnings after tax and dividends on Preferred Stock was \$182,895. In addition to these measures, many of Handy's business decisions are based on Handy's cash flow, which has been even lower than net earnings after tax and dividends on Preferred Stock. The net increase (decrease) in cash and cash equivalents for the fiscal years 2004 and 2003 respectively were \$322,383 and (\$327,645) while the five year average for the increase in cash and cash equivalents for the years 2000 through 2004 was \$43,063. If the Plan is approved, Handy anticipates having the same general level of net earnings that it will distribute as patronage rebates instead of dividends on Preferred Stock. Additionally, Handy will continue to provide year-end audited financial statements to its Members.

² See *Puget Sound Plywood v. Commissioner of Internal Revenue*, 44 T.C. 305 (1965).

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 7

Handy will still offer advertising and trade name usage to its Members if they choose to use them, but will not make them (and has never made them) mandatory in an effort to create a "Handy" brand name. All of the Members choose their own store name and only 3 out of 1,144 Members currently use the brand or trade name "Handy Hardware" in their store name.

If the Plan is approved, the holders of Class A Common Stock and Class B Common Stock will remain the same (Members only) and the rights and privileges of the holders of Class A Common Stock will not change. Each share of Class A and Class B Common Stock will be converted on a one-for-one basis into a share of Class A and Class B Common Stock, respectively, in the resulting Delaware corporation. The holders of Class B Common Stock will be prohibited from transferring or hypothecating their shares except transfers to Handy. Members will still be required to purchase Class B Common Stock bi-monthly (simultaneously with bi-monthly invoicing for hardware purchases) based on the required stock ownership level discussed more fully below. In addition, upon opening an additional store, each Member will be required to purchase an additional ten shares of Class B Common Stock rather than ten shares of Preferred Stock.

Upon approval of the Plan, Handy will create a new class of stock, designated as Class C Common Stock, par value \$100, with 200,000 authorized shares. The holders of Class C Common Stock will be Members only and will have rights and privileges identical to the holders of Class B Common Stock: (i) holders of Class C Common Stock will not have voting rights on any matters, (ii) holders will be prohibited from transferring shares of Class C Common Stock except to Handy, and (iii) holders will be prohibited from pledging shares of Class C Common Stock. Unlike Class B Common Stock, Class C Common Stock will only be issued as a patronage rebate to the extent necessary for a Member to meet its required stock ownership requirements (as more fully discussed below).

Additionally, Handy will still continue to require Members to own a minimum amount of Common Stock (Class A, B or C combined must total \$20,000 or 200 shares) and differing amounts of stock above that level based upon warehouse purchases. If a Member's actual stock ownership is less than the required stock ownership, Handy will add a charge of 2% of warehouse purchases to Members' bi-monthly statement for a year, which 2% charge will be accumulated and used to purchase Class B Common Stock on a bi-monthly basis. This 2% charge Handy requires of its under-invested Members was originally created to cover Handy's operational expenses. Currently, Member stock purchases do not cover general and administrative expenses unrelated to operations and services provided directly to Members estimated to have been approximately \$4,000,000 for the year 2005. Even though this charge now only covers 8% of Handy's operational expenses, Handy has chosen to require that 2% of warehouse purchases be used for stock purchases to benefit its Members, as Handy believes that it is helpful to have this cash flow to help offset those expenses.

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 8

If a Member's actual stock ownership is equal to or more than the required stock ownership, then the Member is exempt from the 2% charge for that year. If at the end of a year a Member is over-invested by \$4,000 or more, then in the following year, Handy will offer to repurchase the total over-invested amount of Class B Common Stock at a price equal to or less than par value (\$100 per share) over a period of four years at a rate of ¼ of the over-invested amount per year.

III. DISCUSSION AND BASIS FOR OPINION

A. When is Stock a Security?

Section 2(a)(1) of the 1933 Act³ and Section 3(a)(10) of the 1934 Act⁴ set forth virtually identical definitions of the term "security." Both definitions list "stock" as a security. The United States Supreme Court has, however, in *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 848 (1975) rejected at the outset any suggestion that the purchase of an apartment in a housing cooperative, evidenced by the sale of shares called "stock" must be considered a securities transaction simply because the statutory definition of a security includes the words "any...stock." Moreover, the court rejected an inflexible, literal approach that would require any instrument called "stock" to be classified as a security, and stated instead that "[c]ommon sense suggests that people who intend to acquire only a residential apartment in a state-subsidized cooperative, for their personal use, are not likely to believe that in reality they are purchasing investment securities simply because the transaction is evidenced by something called a share of stock."⁵

The Supreme Court in *Forman* established a two-part test to determine whether an instrument that is called "stock" is a security for purposes of the Acts:

1. The Supreme Court in *Forman* stated that if an instrument is both called "stock" and bears stock's usual characteristics, a purchaser justifiably may assume that the federal securities laws apply.⁶ The characteristics of stock listed by the Supreme Court are:

- a. the right to receive dividends contingent upon an apportionment of profits;
- b. negotiability (*i.e.*, transferability);
- c. the ability to be pledged or hypothecated;

³ 15 U.S.C. § 77(b)(1).

⁴ 15 U.S.C. § 78c(a)(10).

⁵ *Forman* at 848.

⁶ *Landreth Timber co. v. Landreth*, 471 U.S. 681, 686, 105 S.Ct. 2297, 2302 (1985).

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 9

- d. the conferring of voting rights in proportion to the number of shares owned; and
- e. the capacity to appreciate in value.⁷

2. If the instrument does not have the usual characteristics of stock, it may still be a security if it constitutes an “investment contract,” which is a catch-all category included in the definition of “security” under both the Acts.⁸ The Supreme Court in *Forman* adopted the test established in *SEC v. W.J. Howey Co.*, to determine whether an instrument is an “investment contract.” The test is “[w]hether a scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.”⁹

B. Handy's Class A, Class B and Class C Common Stock are not “Securities” under the Five Factor *Forman* Test

Although the instruments issued by Handy to its Members are called “stock,” they do not possess characteristics traditionally associated with stock in a business corporation as outlined in *Forman*. Similar to the fact pattern in *Forman*, a Member views the mandatory purchase of the Class A and Class B Common Stock in Handy as a necessary incident to buying merchandise from Handy and not as the purchase of an investment security. Rather, Members expect a return from their own efforts, i.e., their purchases of merchandise from the Company, not from their investment of capital. Applying the five characteristics from *Forman* to Handy’s stock leads to our opinion that Handy’s stock does not have the significant characteristics of a security as defined in the 1933 Act and the 1934 Act.

1. Dividends versus Patronage Rebates

Purchasing cooperatives often pay to their members an annual “patronage rebate,” representing substantially all of the net earnings of the cooperative remaining after establishment of necessary working capital reserves. Nearly all of the cooperatives described in the previous no-action letters provide for patronage rebates (Feltus Hardware Inc., Hardware Wholesalers, Inc., United Hardware Distributing Co., OUR OWN Hardware Co., American Hardware Supply Co., Services Centers Corp., Peer Marketing Associates, Inc., Associated Grocers of New England, Inc., NDS/Basic, Inc., Professional Veterinary Products, Ltd.)¹⁰ Since the purpose of a purchasing cooperative is to benefit

⁷ Id.

⁸ *Forman*, 421 U.S. at 851-58.

⁹ *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301, 66 S.Ct. 1100, 1104 (1946).

¹⁰ See n.1 above for a listing of the prior cooperative no-action letters. Of these, only the Speer Hardware Company letters does not mention a patronage rebate.

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 10

its members rather than to operate at a profit, Handy will be required to account for its net earnings in accordance with cooperative principles by distributing to its members as patronage rebates all its net earnings from business done with or for Members in excess of reasonable reserves for necessary purposes of the Company. Thus the patronage rebate is in effect a rebate or refund of amounts previously paid by the Member for purchases from the cooperative. Prior no-action requests have been issued by the SEC in situations where a cooperative pays a patronage rebate.

Pursuant to the Plan, Handy's governing corporate documents will be amended to eliminate any reference to Preferred Stock, will expressly prohibit the payment of dividends or other distributions of property other than patronage rebates, and will instead provide only for the payment of patronage rebates.

As contemplated by the Plan and Subchapter T of the Code, Handy will:

- (1) be obligated to pay patronage rebates to its Members;
- (2) on the basis of quantity or value of warehouse purchases by the Members;
- (3) based on the net earnings of Handy from warehouse purchases by its Members.

Accordingly, Handy will not retain any portion of the net earnings from warehouse purchases by its Members in excess of what will reasonably be determined to be necessary for working capital and reserves for the business. Instead, the Board of Directors will annually declare patronage rebates representing all of its net earnings realized from warehouse purchases by its Members in excess of the amount that will be determined to be necessary for working capital and reserves. For instance, if Handy's net earnings from warehouse purchases after provision for income tax and holdbacks for working capital and reserves amounts to \$1,000,000, and a Member's warehouse purchases accounted for 1% of all warehouse purchases made by Members, that Member would receive \$10,000, or 1% of \$1,000,000. If Handy does not have any net earnings based on patronage at the end of a year, the Board of Directors may choose not to distribute patronage rebates.

The patronage rebate is based on each Member's patronage of Handy, as opposed to being based on ownership in Handy, as is the case of a dividend. Handy may, but does not currently intend to, include both total warehouse purchases and direct manufacturer purchases in determining the amount of patronage rebate owed to each Member. A direct manufacturer purchase is a purchase that is shipped directly to the Member from the vendor without being shipped to or delivered from Handy's warehouse. Members pay Handy directly for these purchases. In the past, Handy has not included a stock purchase

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
 June 28, 2006
 Page 11

requirement based on a Member's direct manufacturer purchases similar to the current stock purchase requirement based on warehouse purchases. Handy will continue to leave this option available for cash flow reasons; however, if Handy begins to require stock purchases based on a Member's level of direct manufacturer purchases, it will also give a patronage rebate based on these direct purchases.

The manner of payment of patronage rebates to be distributed to each Member will differ based on whether the individual Member has reached that Member's required stock ownership level. If the Plan is approved, a Member's required stock ownership level will be calculated as follows:

Total Annual Merchandise Purchases	Percentage of Stock to Purchases	Required Stock Ownership Level
Level 1 \$1 to \$250,000	12.5% of total purchase amount	\$31,250
Level 2 \$250,001 to \$500,000	10.0% of total purchase amount	\$56,249
Level 3 \$500,001 to \$750,000	7.5% of total purchase amount	\$74,999
Level 4 \$750,001 to \$1,000,000	5.0% of total purchase amount	\$87,499
Level 5 \$1,000,001 and above	2.5% of total purchase amount	

For all Members, a minimum of 20% of any patronage rebate will be paid out in cash. For Members who meet their required stock ownership level, the balance will be paid either in cash or notes, or a combination of the two, as determined by the Board of Directors. For Members who have not reached their required stock ownership level, the balance will be paid out in Class C Common Stock to the extent necessary to meet the required stock ownership requirements, and the remaining amount of the balance, if any, will be paid out in any combination of cash or notes, as determined by the Board of Directors based on the amount of cash Handy has available for distribution.¹¹ The Class C Common Stock will only be issued in the manner set forth above as partial payment of the patronage rebate and only if a Member has not reached its required stock ownership level.

The payment of patronage rebates based on the proportionate amount of warehouse purchases by each Member on an annual basis, rather than payment of dividends based on ownership levels, as contemplated by the Plan, differs substantially from the usual characteristics of "stock." In *Forman*, the tenants purchased stock for the economic benefit of subsidized low-cost housing and not with the expectation of making a profit on the stock.¹² Similarly, Handy's Members seek membership in Handy in order to realize

¹¹ Associated Grocers of New England, Inc., SEC No-Action Letter, 1989 WL 246382 (Oct. 5, 1989) (allowed at least twenty percent of the patronage dividends to be paid in cash. The balance was paid in Class B stock to the extent necessary to meet the Class B stock ownership requirements or in patronage dividend certificates....).

¹² *Forman* at 851.

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel

June 28, 2006

Page 12

reduced merchandise costs by purchasing inventory collectively in large volumes as the economic benefit, not to realize appreciation in their investment in the stock. This is a critical difference between Handy and ordinary business corporations: the economic benefits which accrue to Handy's Members are directly related to their patronage activity (i.e., the amount of their purchases from Handy), while the economic benefits in a regular business corporation are returned to the shareholders in direct proportion to their investment in the corporation (i.e., the number of shares held). A Member's decision to associate with Handy is not predicated on the opportunity to realize investment profits, but rather the evaluation of the economic benefits of lower cost merchandise through large volume buying power.

2. Transferability

Currently, Members may not transfer shares of Class A Common Stock without first offering the shares to Handy. The shares of Class B Common Stock and Preferred Stock are freely transferable. There are no shares of any class of outstanding stock of Handy that have been transferred to a non-Member third party. Under the Plan, Handy will amend its organizational documents so that holders of Class A, Class B and Class C Common Stock will not be allowed to transfer any shares, except to Handy. Handy will include a provision in its Certificate of Incorporation that requires all certificated shares to have a legend that prohibits transferability (if uncertificated shares, a notice will be sent to each holder containing the restrictions).

The transferability restrictions contemplated by the Plan differ substantially from the usual characteristics of "stock." In *Forman*, the tenants could not transfer or assign their common stock, which is also true for the holders of Handy's shares under the Plan.

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 13

3. Hypothecability

Currently, there are no restrictions on the pledge or hypothecation of any class of Handy's stock. A total of 10 shares of Class A Common Stock, 55 shares of Class B Common Stock and 55 shares of Preferred Stock were pledged to a financial institution at least seven years ago by a former Member. Handy is unable to reacquire those pledged shares and intends to submit them to the state where the former Member is located as unclaimed property. Handy is not aware of any other pledged shares by Members or former Members. Handy is not aware of any lending institution that has perfected a security interest in shares owned by Members or former Members. Under the Plan, Handy will amend its organizational documents to expressly prohibit any of the classes of common stock being pledged or hypothecated. Additionally, all certificated shares will have a legend that prohibits the ability of a Member to pledge or hypothecate the shares (if uncertificated shares, a notice will be sent to each holder containing the restrictions).

The restrictions on hypothecation and pledges contemplated by the Plan differ substantially from the usual characteristics of "stock." In *Forman*, the tenants could not pledge their common stock, which is also true for the holders of Handy's shares under the Plan.

4. Voting

If the Plan is approved, the voting rights of holders of Class A Common Stock and Class B Common Stock will remain the same. Only Handy's Class A Common Stock carries voting rights (except as Delaware law requires class voting, as in the case of amendments to the certificate of incorporation if the amendment relates to certain changes to the shares of that class). In addition, the holders of Class C Common Stock will not have any voting rights. Because each Member will own ten shares of Class A Common Stock, no more and no less, and because the other classes are nonvoting, each Member has equal voting power in Handy, though Members may have widely different dollar amounts invested in Handy's stock. Thus a Member's voting rights are not proportionate to the dollar amount of its investment, as would be the case in an investment in the common stock of a business corporation.

The equality of all Members' voting power, without regard to amount of stock owned, differs substantially from the usual characteristics of "stock." Similar to *Forman* where the voting rights were not in proportion to the number of shares owned, Handy's Class A Common Stock gives each holder ten votes on Handy matters; however, there is no correlation between the number of votes a Member has (always ten votes) and the true measure of economic benefit to the Member, which is the size of the patronage rebate

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 14

which the Member will receive (which is based solely on the volume of business done with Handy, not share ownership).

5. Appreciation in Value

Handy believes that there is no ability for its stock to appreciate in value. All shares of stock always have been and will continue to be sold to Members for \$100 per share, which is the par value. Repurchases by Handy will be made at a price equal to or less than the price originally paid, or \$100 per share for Class A, Class B and Class C Common Stock, which all have \$100 par value. Additionally, because Handy is not publicly traded and because the stock will not be transferable to third parties, Handy does not believe that any of its stock will ever appreciate in value.

The inability of Handy's stock to appreciate differs substantially from the usual characteristics of "stock." In *Forman*, the tenants who desired to sell their shares were required to offer the stock back to the housing cooperative at its initial price. Although Handy has a large number of Members, which could be viewed as a potential secondary trading market in itself, under the Plan, the Members will not be allowed to transfer their stock to other Members or prospective Members. Each Member only will be able to sell its shares back to Handy at the same price or less than the same price such Member paid for it, so there is no opportunity for the shareholder-member to realize any gain from the sale of Handy shares due to appreciation in value.

In Handy's Certificate of Incorporation, the provision on liquidation and dissolution will be amended so that upon liquidation or dissolution of Handy, whether voluntary or involuntary, and after paying or discharging all of its obligations, Handy will pay the original purchase price of the shares, which is the par value, to the holders of Class A, B and C Common Stock. In the unlikely event there is a balance in liquidation proceeds after payment of the original purchase price to the Members, any excess proceeds shall be divided pro rata among the Members in proportion to their patronage during the most recent full fiscal year (unless the IRS requires a different time period for determining patronage).

Section 281 of the DGCL requires that: "[a]ny remaining assets shall be distributed to the Stockholders of the dissolved Corporation . . ." In our opinion, the DGCL requires Handy to distribute any excess profits to the Members rather than to a charity or escheat to the State of Delaware. We believe that if the Certificate of Incorporation requires that Handy distribute its excess net earnings to its Members based on patronage, rather than stock ownership, it will comply with both the DGCL and *Forman* because the excess will be going to the Members as required by the DGCL, but based on patronage in a manner consistent with *Forman*. The distribution of a patronage rebate upon liquidation is no different than a distribution of a patronage rebate at any other time. A patronage rebate upon

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 15

liquidation will not be based on stock ownership at the time, but instead will strictly be based on the amount the current Member has purchased from Handy for the most recent full fiscal year. In the unlikely event that there is an excess amount of proceeds upon liquidation, the only appreciation will be the potential patronage rebate rather than the value of the stock.

The SEC has previously granted no-action requests to companies that had liquidation provisions in their organizational documents which allowed for the excess in liquidation proceeds after the payment of any debts and amounts held back in reserves to be distributed to the members based upon each member's patronage to the company:

- American Truckload Cooperative, Inc., SEC No-Action Letter 1993 WL 262725 (July 1, 1993) (“Since ATC is in business to aid its members to obtain profits in their business, it is not a charitable corporation. In any winding up of ATC, ATC is required to distribute to its members any property remaining after the payment of the coop’s obligations. The bylaws of ATC provide that member-related income ‘shall be divided pro rata among the Members in proportion to their patronage.’”);
- NDS/BASIC, Inc., SEC No-Action Letter, 1988 WL 234433 (June 30, 1988) (“The Certificate of Incorporation provides that the residual assets of the Cooperative remaining after the payment of its liabilities, the distribution to its preferred stockholders of an amount equal to the par value of their Preferred Stock and to the common stockholders of an amount equal to the original purchase price for their common stock, shall be distributed to past and present Members upon the basis of quantity or value of business done over the years with the Cooperative.”);
- Independent Stationers, Inc., SEC No-Action Letter, SEC No-Action Letter 1994 WL 133456 (Apr. 15, 1994) (“In the quite unlikely event that there would be assets remaining after the distributions with respect to Class A and common shares, any excess amount would be distributed to the then extant and former holders of common shares in proportion to their patronage of the company.”);
- Peer Marketing Associates, Inc., SEC No-Action Letter 1993 WL 28727 (Feb. 3, 1993) (“Even upon any such liquidation, dissolution or winding up of PMA, the portion of PMA’s then remaining assets to be devoted to the retirement of its Common Stock shall equal but \$100 per share, a sum equal to the original subscription price thereof. The balance of PMA’s assets, if any, shall be paid to its Members as patronage refunds.”)

In previous no-action letters, companies were able to obtain affirmative no-action relief from the SEC that registration was not required in situations where they were not organized as a non-profit corporation under state law. Most of the companies that were granted no-action requests had the same structure that Handy will have, in that they were

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 16

corporations operating as a cooperative under Subchapter T. Even if Handy were to convert to a non-profit corporation under the Texas Non-Profit Corporation Act or to a cooperative under the Texas Business Organizations Code rather than converting to a Delaware corporation, both statutes allow Handy upon liquidation to distribute any excess proceeds to the Members based on their patronage.¹³

In our opinion, a patronage rebate paid upon liquidation would not be an appreciation in the value of the stock nor would it be a windfall for the Members because it would be solely based on the amount they have purchased from Handy and would be no different than any other patronage rebate.

Non-Member Revenue

The existence of a small percentage of revenue from non-member business does not change the conclusion that the Company's stock is not a security. In the *Forman* decision, the Supreme Court held that the stock of the residential housing cooperative did not involve the kind of profits which would transform such stock into a security even though the members of the cooperative benefited from non-cooperative income derived from leasing professional offices and parking spaces and from operating community washing machines.¹⁴ The Court relied on the economic reality that the members purchased the cooperative's stock in order to procure housing at a beneficial price, and not because they expected to realize a profit from such incidental activities.¹⁵ The Court concluded that the focus of the arrangement was obtaining cooperative housing; the existence of incidental profit did not constitute an "expectation of profit" for purposes of making the stock a "security."¹⁶

For the years 2003, 2004 and 2005, less than 1% of the Company's revenues were from non-member related sales. Non-member revenue for Handy includes income from sources such as: (i) fees from vendors for the lease of a booth at market, (ii) sales of merchandise to employees, and (iii) insurance dividends. This non-member revenue, when evaluated in the context of its significance to total business operations, is insignificant and is merely incidental to Handy's operating activities. Significantly, Handy does not sell its products to parties other than

¹³ See Tex. Non-Profit Corp. Act art. 1396-6.02 ("**Unless provided otherwise by a provision in the corporation's articles of incorporation**, the remaining assets of the corporation shall be distributed only for tax exempt purposes to one or more organizations which are exempt under Section 501(c)(3)...") (emphasis added); Tex. Bus. Org. Code §251.403 (" (5) by distributing any surplus in the manner provided by the certificate of formation: (A) among the patrons who have been members or subscribers of the cooperative association during the six years preceding the date of dissolution, **on the basis of patronage during the period**; (B) as a gift to any cooperative association or other nonprofit enterprise designated in the certificate of formation; or (C) by a combination of both methods of distribution.") (emphasis added).

¹⁴ *Forman* at 855-856.

¹⁵ *Id.*

¹⁶ *Id.*

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel

June 28, 2006

Page 17

its own Members (or prospective Members) and does not market to anyone other than its Members. If the Plan is approved, Handy anticipates that non-member revenue will be comparable to that in previous years.

There are currently thirty-four former Members who still hold shares of Handy, which represent less than 1% of the total outstanding shares. At this point in time, most of the former Members who are shown to be shareholders cannot be found, despite repeated attempts by Handy to locate them. Upon the passage of the required time period under escheat laws for the state where the Member is located, each former Member's shares will be submitted to the state as unclaimed property. Until the time the shares escheat, it is our opinion that this minimal amount of stock held by former Members will not constitute "securities" within the meaning of the Acts. Former Members are not purchasing any merchandise from Handy and the stock issued in their names is frozen, without payment of any dividends, with no rights other than to be paid the par value, \$100 per share, if the former Members can be found. Additionally, no interest of any sort is being accrued or paid.

C. Handy's Class A, Class B and Class C Common Stock are not Investment Contracts

The second test under the *Forman* decision, is determining whether or not the instrument constitutes an "investment contract." An instrument constitutes an investment contract if it is a scheme that involves an investment of money in a common enterprise with profits to come solely from the efforts of others.¹⁷ Handy believes that its stock fails to meet this second part of the *Forman* test.

First, Handy's Members do not invest in Handy with any expectation of receiving profits solely from the efforts of others, as would an investor in an ordinary business corporation. Rather, the benefit a Member expects from its membership is greater profitability of its own business, in part through access to Handy's goods and services, but principally through the Member's own efforts. Handy's role is not to take money from a passive investor and manage it so as to return to the investor a profit, but to provide goods and services that enable an active businessman to derive greater profits from its own business.

In a case involving a sugar cane marketing cooperative, the Eastern District of Louisiana addressed this issue as follows:

It is readily apparent that local sugar cane farmers purchasing shares of stock in the defendant cooperative did not believe that they were purchasing investment securities. The inducement to purchase was membership in an association that would provide the sugar cane farmer with services he might not otherwise obtain....

¹⁷ *SEC v. W.J. Howey Company*, 328 U.S. 293 (1946).

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 18

The cooperative member did not participate for the purpose of obtaining profits from investment securities.¹⁸

Handy's stock also fails to satisfy the investment contract test in that the Members do not receive any "profits" from their investment. Like Handy, other companies as to which the SEC has taken no-action positions require their members to purchase stock or similar instruments on a continuing basis based on a percentage of the member's purchase of material from the company.¹⁹ Similarly, Handy's patronage rebate will be based on each Member's patronage of Handy rather than ownership in Handy. Additionally, as noted previously, there is no ability for appreciation in value of any class of Handy's stock, and no dividends will be paid on Handy's Class A, Class B or proposed Class C Common Stock except in the form of patronage rebates. The SEC has previously granted no-action requests based upon legal opinions that patronage rebates received by members of a cooperative do not constitute "profits" within the meaning of the investment contract test.²⁰ Equity credits or patronage rebates are not profits similar to income from ordinary stock investments, but are rebates or refunds to members based solely on patronage and not on the amount of money invested in stock.²¹

D. Handy's Notes are not Securities

In addition to the analysis immediately above, courts have analyzed whether a note constitutes a security. The Supreme Court in *Reves v. Ernst & Young*, made it clear that mere characterization of an instrument as debt is not dispositive of the issue of whether it is a security.²² In *Reves*, the Supreme Court stated that the notes are not securities *per se*, but must be defined using the "family resemblance" test.²³ Under that test, a note is presumed to be a security unless it bears a strong resemblance to one or more instruments contained in a judicially crafted list of instruments that, although commonly denominated notes, falls outside the "security" category. The Supreme Court went on to note that the presumption may be rebutted only by showing that the note bears a strong resemblance to one of the enumerated categories of instruments which are exceptions, as determined by using the following four factors: (1) the motivations that would prompt a reasonable seller and buyer to enter into a transaction; (2) the "plan of distribution"; (3) the reasonable expectations of the investors; and (4) additional factors,

¹⁸ *B. Rosenberg & Sons, Inc. v. St. James Sugar Cooperative, Inc.*, 447 F.Supp. 1, 4 (E.D. La. 1976), *aff'd*, 565 F.2d 1213 (5th Cir. 1977).

¹⁹ Feltus Hardware Inc., SEC No-Action Letter, 1988 WL 235185 (Nov. 9, 1988) (2% requirement); Speer Associated Distributors, Inc., SEC No-Action Letter, 1985 WL 54480 (Sept. 12, 1985) (2% requirement); United Hardware Distributing Co., SEC No-Action Letter, 1985 WL 54135 (May 6, 1985) (2% requirement); Associated Grocers of New England, Inc., SEC No-Action Letter, 1989 WL 246382 (Oct. 5, 1989).

²⁰ *Id.*

²¹ *Id.*

²² *Reves v. Ernst & Young*, 110 S. Ct. 945 (1990).

²³ *Id.*

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 19

such as the existence of another regulatory scheme, which would reduce the risk of the note, thereby rendering application of the 1933 Act unnecessary.²⁴

Under the Plan, Handy will distribute notes under two different conditions. The first condition is when a Member sells its shares back to Handy and the Member chooses to receive a note rather than cash upon the repurchase of their shares (“Member Withdrawal Notes”) and the second condition is a distribution of a note as partial payment of a patronage rebate (“Patronage Rebate Notes”), collectively with the Member Withdrawal Notes, the “Notes”).

Member Withdrawal Notes

If a Member withdraws from Handy, its Class B and proposed Class C Common Stock will be required to be repurchased by Handy at \$100 per share, which is par value. The cash paid immediately will be the greater of: (a) \$3,000 or (b) 20% of the aggregate par value of such shares, with the balance of the Class B and proposed Class C Common Stock repurchase amount to be paid at the Member’s option, either: (i) at 100% of par value, with equal payments on a deferred basis for five years; or (ii) with immediate payment in cash at 85% of par value. The Member Withdrawal Notes will not bear any interest, will be unsecured and may be redeemed early at the option of Handy.

The *Reves* first factor is to determine the motivations that would prompt a reasonable person to enter into a transaction. These Member Withdrawal Notes, if used at all, would be issued to the withdrawing Member, not as a result of an investment acquired with the intention to earn a profit, but from the unpredictable event of the Member withdrawing from Handy. There would be no intent when money is paid to Handy to make a profit; the Member Withdrawal Note simply represents the terminating steps of a commercial transaction, not an investment vehicle “motivated” by the desire to earn a profit. The Member Withdrawal Note also fails the second factor of the *Reves* test in that the Member Withdrawal Note is not issued or traded for speculation; there is no general offer to a broad segment of the public on its issuance, and there is no secondary trading market. The third factor in *Reves*, the “reasonable expectations of the investing public,” would also indicate that the Member Withdrawal Notes are not investments. Independent hardware dealers become members of Handy to purchase goods at a lower price through Handy’s large buying power, not because Handy advertises to independent hardware dealers that they can invest in Handy by becoming a member. Unlike the *Reves* case in which the cooperative’s advertisements characterized the notes as “investments” and thereby created expectations/perceptions that made it seem reasonable for a prospective purchaser to believe he was making an investment to realize gain, Handy makes no such characterizations and it encourages no expectations or perceptions that participating in the cooperative will bring such Member gain or appreciation in any investment sense. As to the fourth test in *Reves*, the

²⁴ *Id.*

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 20

Members have the option to accept cash for their shares upon withdrawal which would reduce all risk involved since they would not be receiving a Member Withdrawal Note.

Patronage Rebate Notes

The second condition in which Handy will distribute notes will be as partial payment of a patronage rebate. The Board of Directors will determine, at the time patronage rebates are issued, the amount of the patronage rebate that will be distributed via a note. The Patronage Rebate Notes will not bear any interest, will be unsecured and may be redeemed early at the option of Handy. As is true with the Member Withdrawal Notes, these Patronage Rebate Notes do not constitute securities within the meaning of the Acts.

The Patronage Rebate Notes should not be characterized as securities because the Patronage Rebate Notes will simply formalize an open-account debt incurred in the ordinary course of business in that the amount of the Patronage Rebate Notes will be the non-cash amount of patronage rebates due to the Member. Under the first *Reves* factor, Members do not acquire Patronage Rebate Notes from any intent to realize a "profit" from their "investment." In the case of Handy as noted above, the Member is motivated by the desire to be able to purchase goods at a lower price through Handy's large volume buying power. The Patronage Rebate Notes will be given in lieu of cash and will correct for any cash flow needs of Handy. Second, the Court in *Reves* analyzed the plan of distribution of the instrument to determine whether there is common trading for speculation or investment. There will be no market for Handy's Patronage Rebate Notes and no plan of distribution. The Patronage Rebate Notes cannot be transferred, negotiated, pledged or assigned. The Patronage Rebate Notes have no potential for increase in value and are not designed to be of interest as an investment. Third, the Court in *Reves* examined the reasonable expectations of the investing public. The only reason a Handy member will acquire Patronage Rebate Notes is as a result of the Member's participation in cooperative activities. No effort will be made by Handy to market Patronage Rebate Notes or to entice prospective Members on the basis of economic gain to be derived from these Patronage Rebate Notes. As to the fourth test in *Reves*, Handy acknowledges that there is no other regulatory scheme which would reduce any risk involved in acquiring Patronage Rebate Notes.

E. Our Opinion is Not Inconsistent with Numerous Other Instances where the SEC has Granted No-Action Requests that a Company's Stock is not a Security

We believe our opinion is not inconsistent with previous no-action letters in which the SEC has granted no-action requests that a company's stock is not a "security" within the meaning of the definition of a security under the Acts, although it is understood that the previous requests for no-action granted by the SEC were based on individual facts in those letters. See Professional Veterinary Products, Ltd. SEC No-Action Letter (July 12, 1996); Feltus Hardware Inc., SEC No-Action Letter, 1988 WL 235185 (Nov. 9, 1988); Hardware Wholesalers, Inc., SEC No-Action Letter, 1987 WL 108008 (May 26, 1987); Speer Hardware Co., SEC No-Action

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel

June 28, 2006

Page 21

Letter, 1987 WL 107433 (Jan. 5, 1987); Speer Associated Distributors, Inc., SEC No-Action Letter, 1985 WL 54480 (Sept. 12, 1985); United Hardware Distributing Co., SEC No-Action Letter, 1985 WL 54135 (May 6, 1985); OUR OWN Hardware Co., SEC No-Action Letter, 1984 WL 45162 (April 25, 1984); American Hardware Supply Co., SEC No-Action Letter, 1984 WL 44919 (Jan. 9, 1984); Services Centers Corp., SEC No-Action Letter, 1993 WL 177856 (May 21, 1993) (credit unions); Peer Marketing Associates, Inc. (Feb. 3, 1993) (tobacco and confectionery distributors); Associated Grocers of New England, Inc., SEC No-Action Letter, 1989 WL 246382 (Oct. 5, 1989) (retail grocers); NDS/Basic, Inc., SEC No-Action Letter, 1988 WL 234433 (June 30, 1988) (office supplies dealers); Associated Grocers, Inc., SEC No-Action Letter, 1988 WL 233663 (Feb. 12, 1988) (retail grocers).

If the Plan is adopted, Handy will terminate the registration of its Class A Common Stock, Class B Common Stock and Preferred Stock currently registered under Section 12(g) under the 1934 Act pursuant to Rule 12h-3(b)(1)(i) and will discontinue filing periodic and other reports pursuant Rule 12h-3(b)(1)(i) under the 1934 Act. With respect to the termination of registration of the stock of a company which has already registered its stock under the 1934 Act, see Professional Veterinary Products, Ltd. SEC No-Action Letter (July 12, 1996); Affiliated of Florida, Inc., September 25, 1987, available in LEXIS, 1987 SEC No-Act. LEXIS 2464, and Associated Grocers, Incorporated, February 12, 1988, available in LEXIS, 1988 SEC No-Act. LEXIS 174, in which the Staff granted no-action positions to 1934 Act registered companies.

IV. CONCLUSION

Based on the foregoing, it is our opinion that under the Plan described herein and subsequent to the adoption of the Plan, neither Handy's stock nor Notes will be a "security" within the meaning of that term as defined in Section 2(a)(1) of the 1933 Act and Section 3(a)(10) of the 1934 Act and therefore registration is not required under the Acts. As contemplated by the Plan, Handy will operate on a cooperative basis under Subchapter T of the Code, and its stock and Notes will meet all of the requirements of the *Forman* test as they will not possess any characteristics historically associated with a security and will not be considered investment contracts. Members join Handy to obtain access to lower price merchandise and other services they might not obtain individually. Members do not join Handy in expectation of any investment profit as that test was defined in *Howey* and applied in *Forman*. Additionally, Handy's stock and Notes will meet the five factor test used in *Forman* in that:

- Members will not receive dividends or other distributions of property, but will only receive patronage rebates based upon a Member's proportionate amount of warehouse purchases from Handy;
- Members will not be able to transfer their stock or Notes;

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 22

- Members will not be permitted to pledge or hypothecate their stock or Notes;
- All Members will have equal voting rights, regardless of investment level in Handy; and
- There will be no ability for any class of Handy's stock or Notes to appreciate in value. Handy will repurchase shares only at a price equal to or less than the original purchase price of \$100 per share.

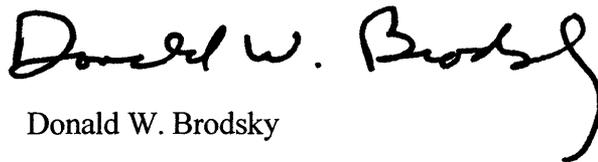
Based upon the foregoing, it is our opinion that the Class A, Class B and Class C Common Stock and Notes to be offered in connection with the Plan and the Class A, Class B and Class C Common Stock and Notes offered subsequent to the adoption of the Plan will not be securities within the meaning of the Acts, and therefore registration is not required under the Acts, we respectfully request that the Division of Corporation Finance not recommend any enforcement action with respect to: (i) the conversion of all issued and outstanding shares of Preferred Stock into Class B Common Stock without registration under the 1933 Act; (ii) the issuance, offer and sale of Handy's Class A Common Stock Class B Common Stock, new Class C Common Stock and Notes to Members based solely upon their patronage of Handy without registration under the 1933 Act; and (iii) the discontinuance of filing of periodic and other reports upon filing of a certification on Form 15 to terminate Handy's registration under Section 12 of the 1934 Act of its Class A Common Stock, Class B Common Stock and Preferred Stock pursuant to Rule 12g-4(a)(1)(i) under the 1934 Act and the suspension of Handy's reporting obligations with respect to such stock under Section 15(d) of the 1934 Act pursuant to Rule 12h-3(b)(1)(i) of the 1934 Act.

Thank you for your attention to the issues presented herein. Please call either Lee Thompson at (713) 951-3342 or Don Brodsky at (713) 951-3341 with questions, comments, or requests for additional information.

Very truly yours,



Lee Thompson



Donald W. Brodsky

Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

Office of Chief Counsel
June 28, 2006
Page 23

ENCLOSURES

1. Certificate of Incorporation
2. Bylaws
3. Plan and Articles of Conversion to Convert from a Texas corporation to a Delaware corporation
4. Certificate of Conversion to Convert from a Texas Corporation to a Delaware corporation
5. Subscription to Shares Agreement
6. Member Contract