



KANSAS

OFFICE OF THE SECURITIES COMMISSIONER

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September 8, 2006

Eric N. Anderson, Esq.
Clark, Mize & Linville, Chtd.
PO Box 380
Salina, Kansas 67402-0380

RE: Interpretive Opinion No. 2007-002
The Heartland Voluntary Advertising Group Cooperative Exchange
File No. 2007X0000002

Synopsis: Stock of The Heartland Voluntary Advertising Group Cooperative Exchange is not a security as defined by K.S.A. 17-12a102(28) because it does not possess the principal attributes of stock and it is not purchased with the expectation of profits to be generated through the efforts of others.

Dear Mr. Anderson,

In your letter dated July 27, 2006, you request confirmation that the sale of stock by The Heartland Voluntary Advertising Group Cooperative Exchange ("the Coop") would not be subject to regulation under the Kansas Uniform Securities Act. You argue that the stock is not within the scope of the definition of a "security" in K.S.A. 17-12a102(28) or, in the alternative, that the stock should be granted an exemption from registration under K.S.A. 17-12a203.

I incorporate by reference the facts as represented in your letter. In short, the Coop will be organized by grocers who are supplied and serviced by a common supplier and who wish to create economies of scale by engaging in joint product advertising. Although the Coop will be organized as a corporation, ownership of the stock will be limited to one share per store and the shares cannot be traded freely. The shares can only be sold or redeemed at par value, so there is no capacity for the stock to appreciate in value. Shareholders will be entitled to a yearly dividend of \$50 per share if the Coop is profitable, but the majority of earnings and profits will be distributed in the form of patronage distributions. Those distributions will be based solely on the amount of business done by each stockholder through the supplier and the Coop. In your opinion, the stock cannot realistically be pledged or hypothecated by a stockholder as collateral for a debt.

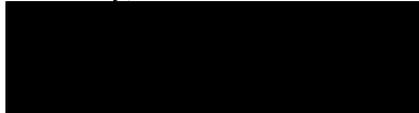
Although the Coop interests are called "stock," a term that is included in the list of items deemed to be securities under K.S.A. 17-12a102(28), we have historically looked at the substance of the instrument to determine whether it truly falls within the definition of a security. In order to determine whether an equity interest is a "stock" as that term is meant within the context of the definition of a security under K.S.A. 17-12a102(28), we have considered the principal attributes of stock noted by the Court in United Housing Foundation, Inc., v. Forman, 421 U.S. 837 (1975). These attributes include (1) the right to receive dividends; (2) negotiability; (3) the ability of stockholders to pledge or hypothecate the shares; (4) voting rights in proportion to the number of shares owned; and (5) the capacity of the shares to appreciate in value. As a matter of substance rather than form, an equity interest in the Coop does not appear to share many of these attributes, so it would not be considered a "stock" as that term is used in the Kansas Uniform Securities Act.

Aside from the question of whether the equity interests are securities because they are "stock," we have also considered whether the interests are securities because they are "investment contracts." As you know, Kansas courts follow the well-known test set forth in S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946), to determine whether an interest is an investment contract. In our view, the stock would not meet the definition of an investment contract because a shareholder is not motivated to purchase the stock in order to achieve a profit through the efforts of others. Instead, the stock is purchased as a way to obtain access to cheaper goods and services by creating economies of scale, and the value of the stock is dependent upon the stockholder's efforts to sell those goods.

Staff concludes that the stock of the Coop is not a security under the Kansas Uniform Securities Act. Therefore, your request for an exemption under K.S.A. 17-12a203 is rendered moot, and our agency will take no enforcement action if the interests are offered and sold in Kansas without registration under the Act.

Please note that any variance from the facts expressed in your letter, including oral representations to prospective purchasers that are inconsistent with the information you have submitted, could result in a different conclusion. This opinion is intended solely as an expression of enforcement policy by this agency, and its legal conclusions are not binding on any court, legal tribunal, or any other person.

Sincerely,

A large black rectangular redaction box covering the signature of Rick A. Fleming.

Rick A. Fleming
General Counsel