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COMMISSIONER



ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS
EXECUTIVE SECRETARY

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
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June 6, 1996

Steven L. Sablowsky, Esq.
Gefsky and Lehman
Twenty Third Floor, One PPG Place
Pittsburgh, PA 15222

RE: National Turf Cooperative, Inc.
A.R.S. § 1801(22)

Dear Mr. Sablowsky:

On the basis of the facts set forth in your letter of May 23, 1996, and in reliance upon your opinion as counsel, the Securities Division ("Division") will not recommend enforcement action for violation of the Securities Act of Arizona ("Act") should the transaction take place as set forth in your letter. In concurring with your opinion that the common stock offered by National Turf Cooperative, Inc. ("NTC") does not constitute "securities" for purposes of the Act, the Division has noted particularly your representations that NTC is a purchasing cooperative and that its stock merely evidences membership in the cooperative and does not possess most of the characteristics of a security, such as transferability, ordinary dividend rights, and the potential for appreciation in value.

As this position is premised upon the facts set forth in your letter and documents enclosed therewith, it should not be relied on for any other set of facts or by any other person.

To the extent that the transaction does not take place as set forth in your letter of May 23, 1996, or a material change in circumstances causes the common stock issued by NTC to be deemed "securities" for purposes of the Act, then the anti-fraud provisions of the Act will be applicable ab initio.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Dee Ridell Harris".

DEE RIDDELL HARRIS
Director of Securities

DRH:ctf
Attachment

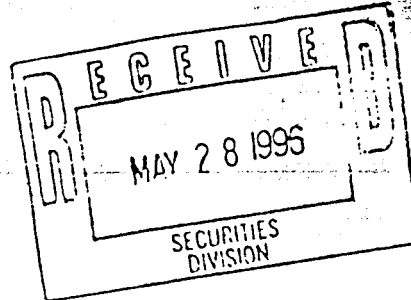
GEFSKY AND LEHMAN

ATTORNEYS

A Professional Corporation
Twenty Third Floor, One PPG Place
Pittsburgh, Pennsylvania 15222

Steven L. Sablowsky

Tel (412) 391-2727
Fax (412) 391-1685



May 23, 1996

Arizona Corporation/Securities Division
Third Floor, 1300 West Washington Street
Phoenix, Arizona 85007

CERTIFIED MAIL
RETURN RECEIPT

Attn: Director of Securities

RE: National Turf Cooperative, Inc.

Dear Sir or Madam:

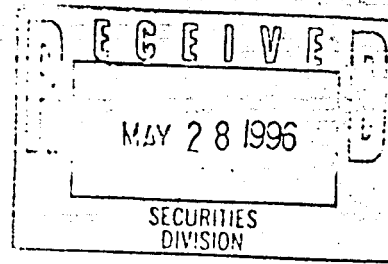
On behalf of our client, National Turf Cooperative, Inc., a Pennsylvania cooperative corporation ("NTC" or the "Cooperative"), we hereby request confirmation that the Arizona Corporation Commission will not take enforcement action against NTC if it proceeds to issue membership interests in the form of shares of its common stock, under the facts and in the manner set forth herein, without registration under the Securities Act of Arizona, as amended (the "Act"), on the basis that the shares of NTC common stock are not securities within the meaning of Section 44-1801(22) of the Act.

As more specifically set forth below, we believe that NTC's common stock does not possess the characteristics of a security, such as unrestricted transferability, ordinary dividend rights, voting rights in proportion to share ownership and the potential for the appreciation in the value of the common stock or the characteristics of an investment contract. The NTC common stock will merely represent patronage or membership interest in a corporation operating on a cooperative basis.

I. BACKGROUND

NTC is a Pennsylvania cooperative corporation incorporated on December 18, 1995 pursuant to the Pennsylvania Cooperative Corporation Law of 1988 ("Cooperative Law"). Although organized in corporate form, the purpose and common bond of membership of NTC is to act as a purchasing cooperative dealing in seeds, chemicals, fertilizers, spare parts and in other goods and services used with respect to its turf and, management by the golf courses in various states who elect to become patrons of NTC. NTC shall arrange for the purchase of seeds, chemicals, fertilizers, repair parts and other related goods to be sold to its members at the cost thereof plus a small mark-up to cover administrative and operating costs, as specified in the Application for Membership and

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Membership Agreement between NTC and each of its patron shareholders, a sample copy of which is attached hereto as Exhibit "A" ("Patronage Agreement"). Ownership of shares in the Cooperative will be expressly made only to owners of golf courses desiring to avail themselves of the collective purchasing power and other services to be offered by the Cooperative. NTC proposes to sell its common stock to such golf course owners as a condition of becoming a patron of the cooperative at a purchase price to be established from time to time by the Board of Directors of NTC based on its capital needs, and with the proceeds of sales of its common stock used solely to finance NTC's working capital needs. It is anticipated that the original membership cost will be \$2,000 for the first course and \$1,000 for each additional course owned by the member.

All sales of the Cooperative's common stock will be made directly by the Cooperative to prospective members by employees of the Cooperative, and no underwriters or broker-dealers will be employed. These employees will be using the attached Offering Material substantially in the form which is attached to this letter as Exhibit "B". A portion of such employee's compensation will be based on the number of new members of the Cooperative secured by such employee.

NTC has entered into a management contract with Turfcom, L.L.C., a Maryland limited liability company ("Turfcom") pursuant to which Turfcom will (1) negotiate with various manufacturer's and distributor's of turf maintenance products in order to procure substantial product discounts through the collective purchasing strength of the Cooperative and other entities that it may serve in related activities; (2) manage all product ordering, tracking and accounting of the turf maintenance products purchasing process; (3) manage all invoicing, billing and collections procedures; (4) implement a computer data base network for the NTC members; and (5) develop additional products and services for NTC, to be presented from time to time to NTC's Board of Directors for consideration. The management contract is further explained under the heading Management Contract in Exhibit "B".

Reflecting its very limited initial purpose as a purchasing cooperative for golf courses, NTC's Articles of Incorporation as most recently amended and By-Laws, copies of which are attached hereto as Exhibits "C" and "D" ("Organizational Documents"), consistent with the Cooperative Law, provide that no person or entity shall qualify as, or be admitted or allowed to remain as, a shareholder unless it is the owner a golf course, and who agrees to be a patron of, and purchase a significant portion of their requirements for turf management supplies from NTC pursuant to the Patronage Agreement between NTC and each patron shareholder.

Consistent with, and to enforce the foregoing, the sale, transfer, pledge or hypothecation

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of shares of NTC's common stock is substantially restricted by the terms of the Organizational Documents, and each share certificate will bear a restrictive legend setting forth the applicable restrictions, which shall read, in part, as follows:

The common stock of the Cooperative may be purchased, owned or held only by owners of golf courses, who shall patronize the Cooperative in accordance with uniform terms and conditions prescribed by it, and only such persons or entities shall be regarded as eligible shareholders of the Cooperative. The common stock of this Cooperative may be transferred on the books of the Cooperative only with the prior written consent of the Board of Directors of the Cooperative, and then only to persons eligible to hold the same; and no purported assignment or transfer of common stock shall vest in any person not eligible to hold the same, any rights or privileges on account of such stock, or vote or voice in the management or affairs of the Cooperative.

Upon termination of membership in the Cooperative in accordance with the provisions of the Articles of Incorporation and By-Laws, the Common Stock evidenced by this certificate shall be returned to the Cooperative without any payment for the interest in the Cooperative it evidences, except to the extent as may be determined otherwise by the Cooperative's Board of Directors.

NTC shall be operated on a non-profit basis relative to all of its transactions with its shareholder patrons and is required under the Organizational Documents to account, on a patronage basis, to its shareholders for all amounts received on account of the sale of goods to its patron shareholders over and above the costs of goods and the costs and expenses of NTC ("Excess Revenues"). In this regard, under the Organizational Documents, NTC will generally allocate and "dividend" all Excess Revenues derived from its operations to its shareholders on a patronage basis (i.e., pro rata based on patronage with NTC of each of its patron shareholders) to the shareholders, provided that at least 20% of the foregoing annual patronage "dividend" shall be paid or allocated in cash (or credit against purchases). In no event are "dividends" paid to shareholders by virtue of share ownership or allocated on a per share basis.

In addition, under the Articles of Incorporation of NTC and its By-Laws, each shareholder of NTC is entitled to only one vote in connection with the management of the affairs of NTC, regardless of the number of shares of common stock such shareholder may own.

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II. ANALYSIS

Based upon the foregoing facts and the analysis set forth herein, we are of the opinion that, under the federal securities laws, as well as the securities laws of the State of Arizona, the common stock issued to the shareholder patrons of NTC would not be deemed a "security", as that term is defined by the Act, and, therefore, the issuance of such stock by NTC does not require registration under the Act. This position is supported by a number of no-action letters issued by the Securities Exchange Commission ("SEC") to various cooperatives, and is consistent with the policies on which the Securities and Exchange Act of 1933 (the "1933 Act") as well as the Act are predicated, as noted below.

"Security" is defined broadly in the 1933 Act, as well as the Act, to include "stock" and "investment contracts." However, it is well established that the fact that an instrument is called or takes the form of stock does not alone make it a security, since such determination turns on the economic realities underlying a particular transaction. The two principal determining issues are (A) whether the instrument in question exhibits a sufficient number of the traditional characteristics of a security so as constitute a security, and (B) whether the transaction constitutes an investment contract.

A. Traditional Characteristics of a Security.

The five basic characteristics of a security have been traditionally identified by the U.S. Supreme Court as follows:

1. The right to receive dividends contingent upon an apportionment of profits;
2. Negotiability;
3. The ability of the instrument to be pledged or hypothecated;
4. The conferring of voting rights in proportion to stock ownership; and
5. The capacity to appreciate in value.

United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 849 (1975).

Applying the foregoing stated factors to NTC's common stock demonstrates that NTC's common stock is not a security under the 1933 Act or the Act.

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1. Dividends. The Articles of Incorporation of the Cooperative provide that no dividends, as such, can be paid on its capital stock. Only patronage rebates may be distributed to shareholders based on patronage and not on share holdings. A rebate in the form of a patronage dividend will be paid to each shareholder patron, based solely upon the business transacted between NTC and the shareholder patron. If a shareholder patron does not transact any business with NTC, such shareholder patron would not be entitled to a patronage dividend with respect to income earned by NTC. Consequently, such purchase rebates more closely resemble deferred price adjustments and not apportionments of profits.

The critical distinction between the Cooperative and business corporations whose securities must be registered lies in the fact that financial benefits which accrue to NTC members are directly related to their patronage activity (i.e., the amount and type of their purchases from the Cooperative), while the financial benefits of a business corporation are returned to stockholders in direct proportion to their investment in that corporation. The Cooperative does not operate to produce profits. Rather like other cooperatives, NTC will conduct its business on a cost basis and returns to its members in the form of patronage dividends any excess of receipts over expenses and reserves. These are not "profits" within the meaning of federal and state securities laws. A true security associated with a business corporation on the other hand, enjoys the opportunity for potential gain or profit. The profit referred to is either capital appreciation resulting from the initial investment, or participation in earnings resulting from the use of the investors' funds. Clearly, a golf course's decision to associate with the Cooperative is not predicated on a chance to realize some investment gain, but rather is the result of a critical evaluation of the economic benefits of lower cost for its merchandise through cooperative buying and such other benefit programs and services that may be offered from time to time.

2. Negotiability. Under the Organizational Documents, and as noted in the legend set forth above, NTC's common stock will not be negotiable and may not be sold or transferred by the shareholder patron for any reason without the prior consent of NTC's Board of Directors and, then, only to other eligible golf courses. NTC may further require the redemption or transfer of its common stock from shareholders which its Board of Directors determined are no longer eligible to own its shares, including a shareholder's failure to purchase a sufficient portion of its turf management supplies from NTC. As a result of the express and substantial transfer restrictions and the requirements for eligibility, NTC's common stock cannot be considered negotiable.

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3. Pledge or Hypothecation. For the reasons noted in the preceding paragraph, including substantial transfer restrictions and eligibility requirements, the common stock of NTC cannot be effectively pledged or hypothecated.

4. Voting Rights. Under NTC's Articles of Incorporation, each shareholder patron shall be entitled to one vote, regardless of the number of shares such shareholder patron may own. Thus, voting rights are not granted in proportion to stock ownership.

5. Capacity to Appreciate. Finally, as discussed above, there will be little or no opportunity for appreciation in NTC's common stock by virtue of the fact that it can only be sold to qualified shareholder patrons with the direct consent of NTC's Board of Directors. Upon a termination of membership, a shareholder patron will not receive any payment for its common stock, unless the Board of Directors decide otherwise. NTC would submit that a member of a cooperative views its mandatory purchase of "stock" as a necessary incident to doing business with the cooperative and not as an investment as that concept is normally viewed. Unlike typical securities transactions, the financial benefits which result from membership in a cooperative are not in any way related to the initial investment. Rather, members expect a return from their purchases of merchandise from NTC, and their ability to avail themselves of any services of NTC, not from their investment of capital.

B. Investment Contract.

In addition to the fact that the common stock issued by NTC does not possess any of the traditional attributes of a security, the stock does not constitute an investment contract under the test established in SEC v. W. J. Howey, 328 U.S. 293 (1946). In Howey, the Supreme Court stated that a transaction would constitute an "investment contract" and thus a security if, in economic reality, there is (1) an investment of money (2) in a common enterprise (3) that was premised on a reasonable expectation of receiving profits solely from the entrepreneurial or managerial efforts of others.

We have already discussed the fact that there is little or no likelihood of appreciation in the value of the common stock. Additionally, we submit that the cost savings realized by virtue of lower prices and purchase rebates received by shareholder patrons of NTC and expressed as patronage "dividends" do not constitute "profit" within the meaning of the Howey test. Also, any potential "income" derived by the shareholder patrons is not derived from the efforts of third parties, but solely from the shareholder patron's purchases of supplies at reduced prices or utilization of services offered to members. Thus, the incentive to prospective shareholder patrons to join NTC is not an

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investment decision to realize a gain on their purchase of the NTC shares, but rather the economic benefits reflected in the cooperative opportunity to purchase goods and receive services at reduced cost.

The foregoing analysis has been adopted by the SEC in a number of no-action letters relating to purchasing cooperatives similar to NTC, including Sports Specialists, Ltd.: SEC No-Action Letter (available September 29, 1991); Associated Grocers Incorporated: SEC No-Action Letter (available February 12, 1988); and Producers Feed Company, SEC No-Action Letter (available July 30, 1990). In taking a No-Action position in such instances, the SEC has noted that (i) the common stock of the purchasing cooperatives did not possess the characteristics of a security, such as ordinary dividend rights, (ii) the potential for appreciation in the value of the stock was not significant, and (iii) the stock merely represented a membership interest in a corporation operating on a cooperative basis.

The analysis set forth above is consistent with the public policy forming the foundation of the 1933 Act as well as the Act, to regulate, and protect citizens from deceptive practices in, the sale of securities in the United States and the State of Arizona. As noted above, the sale of common stock in NTC is a mere incident to the fundamental act of golf courses joining together with the intent of cooperatively purchasing supplies or services for their courses, with the hope of obtaining volume discounts to be realized, in part, in the form of patronage dividends. In no event is there any investment opportunity to be realized from NTC's common stock, apart from receiving bulk discounts in the joint purchase of supplies and services for a shareholder's golf course.

Although each no-action request must be judged on its own particular facts, we believe that the analysis employed by the Securities and Exchange Commission in the foregoing no-action letters is equally applicable to the facts and circumstances surrounding the proposed issuance of common stock by NTC as described above. Based upon the foregoing, we are of the opinion that the common stock being issued by NTC contains none of the traditional characteristics of a "security" under the 1933 Act or the Act.

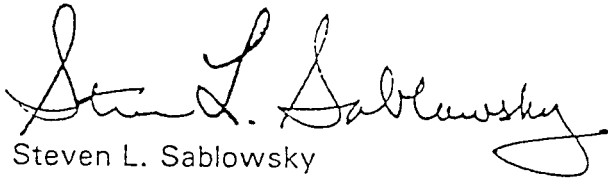
We therefore seek confirmation from you that the Arizona Corporation Commission will, similarly, not view the common stock of NTC as a "security" under the Act and that if NTC proceeds with its proposed issuance without registering NTC's common stock, or the agents or employees of NTC who offer or issue such common stock, in Arizona, the Arizona Corporation Commission will not take enforcement action against NTC or its principals, agents or employees.

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We will not begin offering membership to potential members in Arizona until we have received your confirmation that the membership interests in the form of common stock will not be considered securities. Accordingly, we would appreciate your responding, as soon as possible, to our request. If, for any reason, you conclude that you cannot respond affirmatively to our request, we would appreciate the opportunity to discuss the matter with you prior to the preparation of your response and ask that you call the undersigned collect at (412) 391-2727.

Very truly yours,


Steven L. Sablowsky

SLS/tjh

Enclosures