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UNI MARTS INC
Form 10-Q/A
June 04, 2004

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-Q/A
Amendment No. 2

(MARK ONE)

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED JANUARY 1, 2004

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE TRANSITION PERIOD FROM _____ TO _____

COMMISSION FILE NUMBER 1-11556

UNI-MARTS, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	25-1311379
(State or other jurisdiction of Incorporation or organization)	(I.R.S. Employer Identification No.)

477 EAST BEAVER AVENUE	
STATE COLLEGE, PA	16801-5690
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code (814)234-6000

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

7,202,979 Common Shares were outstanding at January 29, 2004.

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This Form 10-Q/A Amendment No. 2 is being filed to amend Exhibits 31.3 and 31.4 to the Quarterly Report on Form 10-Q of Uni-Marts Inc. for the quarter ended January 1, 2004, as amended by Form 10-Q/A filed on May 28, 2004. Item 4 is restated in this Form 10-Q/A as previously filed for the convenience of the reader.

ITEM 4 - CONTROLS AND PROCEDURES

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CEO AND CFO CERTIFICATIONS. Appearing as Exhibits 31.1 and Exhibit 31.2 of this Quarterly Report are two certifications, one by each of our Chief Executive Officer and our Chief Financial Officer (the "Section 302 Certifications"). This Item 4 of our Quarterly Report contains information concerning the evaluation of the Company's disclosure controls and procedures and matters regarding our internal controls that are referred to in the Section 302 Certifications. This information should be read in conjunction with the Section 302 Certifications for a more complete understanding of the topics referred to in the Section 302 Certifications.

EVALUATION OF OUR DISCLOSURE CONTROLS AND PROCEDURES. The Securities and Exchange Commission (the "SEC") requires that as of the end of the quarter covered by this Report, the CEO and the CFO must evaluate the effectiveness of the design and operation of our disclosure controls and procedures and report on the effectiveness of the design and operation of our disclosure controls and procedures.

"Disclosure controls and procedures" mean the controls and other procedures that are designed with the objective of ensuring that information required to be disclosed in our reports filed under the Securities Exchange Act of 1934 (the "Exchange Act"), such as this Quarterly Report, is recorded, processed, summarized and reported within the time periods specified in the rules and forms promulgated by the Securities and Exchange Commission (the "SEC"). Disclosure controls and procedures are also designed with the objective of ensuring that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

EVALUATION OF OUR INTERNAL CONTROL OVER FINANCIAL REPORTING. The SEC also requires that the CEO and CFO certify certain matters regarding our internal control over financial reporting.

"Internal control over financial reporting" means the process designed by, or under the supervision of, our CEO and CFO, and implemented by management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the issuer's assets that could have a material effect on the financial statements.

Among the matters our CEO and CFO must certify in the Section 302 Certifications are whether all "significant deficiencies" or "material weakness" in the design or operation of our internal control over financial reporting that are likely to adversely affect our ability to record, process, summarize and report financial information have been disclosed to our auditors and the Audit Committee of our Board of Directors. "Significant deficiencies" has the same meaning as the term "reportable conditions" in auditing literature. Both terms represent deficiencies in the design or operation of internal control over financial reporting that could adversely affect a company's ability to record, process, summarize and report financial data consistent with the assertions of management in a company's financial statements. A "material weakness" is defined in the auditing literature as a particularly serious reportable condition

where the design or operation of one or more internal control over financial reporting components does not reduce to a relatively low level the risk that misstatements caused by error or fraud may occur in amounts that would be material in relation to the financial statements and not be detected within a timely period by employees in the normal course of performing their assigned functions. A "material weakness" constitutes a greater deficiency than a "significant deficiency, but an aggregation of significant deficiencies may constitute a material weakness in a company's internal control over financial reporting.

LIMITATIONS ON THE EFFECTIVENESS OF CONTROLS. The Company's management, including the CEO and CFO, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, as opposed to absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that the benefits of controls must be considered relative to their costs. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of an employee, by collusion of two or more employees, or by management override of the control. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

CEO/CFO CONCLUSIONS ABOUT THE EFFECTIVENESS OF THE DISCLOSURE CONTROLS AND PROCEDURES. As required by Rule 13a-15(b), the Company's management, including our CEO and CFO, conducted an evaluation as of the end of the period covered by this report, of the effectiveness of the Company's disclosure controls and procedures. Based on that evaluation, the CEO and CFO concluded that, despite the limitations noted above, our disclosure controls and procedures are effective to provide reasonable assurance that the disclosure controls and procedures will meet their objectives.

CHANGES IN INTERNAL CONTROL OVER FINANCIAL REPORTING. As required by Rule 13a-15(d), the Company's management, including the CEO and CFO conducted an evaluation of the Company's internal control over financial reporting to determine whether any changes occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. Based on that evaluation, there has been no such change during the period covered by this report.

PART II - OTHER INFORMATION

ITEM 6 - EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

- 3.1 Amended and Restated Certificate of Incorporation of the Company (Filed as exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the period ended July 4, 2002 and incorporated herein by reference thereto).
- 3.2 Amended and Restated By-Laws of the Company (Filed as exhibit 3.2 to the Company's Quarterly Report on Form 10-Q for the period ended July 4, 2002 and incorporated herein by reference thereto).
- 11 Statement regarding computation of per share earnings (loss).

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- 31.1 Certification of the Chairman and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.3 Certification of the Chairman and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.4 Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of the Chairman and Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(b) REPORTS ON FORM 8-K

The Company filed a report on Form 8-K on November 6, 2003, announcing its financial results for the fiscal 2003 fourth quarter and fiscal year, ended September 30, 2003.

The Company filed a report on Form 8-K on January 23, 2004, announcing its financial results for the fiscal 2004 first quarter ended January 1, 2004

The Company filed a report on Form 8-K on January 27, 2004 and amended on February 4, 2004, reporting that (i) it had signed a merger agreement whereby the Company agreed to merge with and into Green Valley Acquisition Co., LLC, a privately-held company formed for the purpose of acquiring the Company (the "Merger") and (ii) the signing of the merger agreement may be deemed to be, and the consummation of the Merger will result in, a change of control of the Company.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Uni-Marts, Inc.
(Registrant)

Date June 4, 2004

/S/ HENRY D. SAHAKIAN

Henry D. Sahakian
Chairman of the Board
(Principal Executive Officer)

Date June 4, 2004

/S/ N. GREGORY PETRICK

N. Gregory Petrick
Executive Vice President and
Chief Financial Officer

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(Principal Accounting Officer)
(Principal Financial Officer)

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UNI-MARTS, INC. AND SUBSIDIARIES
EXHIBIT INDEX

NUMBER	DESCRIPTION
31.3	Certification of the Chairman and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.4	Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes- Oxley Act of 2002.

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