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## State Securities Board

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September 25, 1995

Mr. William M. Christou  
Attorney  
Ace Hardware Corporation  
Legal Department  
2200 Kensington Court  
Oak Brook, Illinois 60521

RE: Ace Hardware Corporation

Dear Mr. Christou:

This responds to your letter dated August 15, 1995, and received by this Agency on August 18, 1995. Your letter was supplemented by letters dated September 7, 1995, September 15, 1995, and September 20, 1995.

Your letters and supplemental materials indicate that Ace Hardware Corporation, a Delaware corporation ("Ace"), manufactures paint products and functions as a wholesaler of hardware and related products. Sales of the products distributed by Ace are presently made primarily to persons engaged in business as dealers in hardware or related items who have entered into membership agreements with Ace. The membership agreements entitle members to purchase merchandise and services from Ace and to use Ace's trademarks and trade names. Ace operates on a cooperative basis and distributes patronage dividends to its eligible members each year in proportion to the amount of their annual purchases of merchandise from Ace and not based on the number of shares owned. Patronage dividend distributions are made in cash, shares of Class C stock, and patronage refund certificates in accordance with a plan adopted by Ace's Board of Directors.

The issued and outstanding shares of Ace stock are divided into three classes: Class A, Class B, and Class C. Class B stock had been offered to retail dealers with respect to each business outlet owned or controlled by them for which a membership was granted by Ace on or before February 20, 1974, but the offering of Class B stock terminated in 1979, and no shares of Class B stock are currently being offered.

All of the issued and outstanding shares of Ace stock are owned by dealer members. No dealer, regardless of the number of member business outlets owned or controlled by him, is entitled to own

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more than 1 share of Class A stock and a dealer who applies for an initial membership must subscribe for a combination of 1 share of Class A stock plus 40 shares of Class C stock. If a membership is applied for with respect to an additional outlet owned or controlled by the same dealer, the dealer must subscribe for 50 shares of Class C stock. The offering price for each share of Class A stock is \$1,000 (par value) and the offering price for each share of Class C stock is \$100 (par value). Ace presently intends to offer 2,126 shares of Class A stock and 92,750 shares of Class C stock in accordance with the above.

Ace's restated certificate of incorporation and bylaws prohibit the declaration of dividends on any of the shares of any class of Ace stock. Shares do not entitle a holder to any preemptive or preferential right to any other shares. All rights to vote and all voting powers are vested solely in the Class A stock, although holders of Class C stock are entitled to vote as a class on certain matters. Cumulative voting of shares is expressly prohibited.

In addition, Ace's bylaws and restated certificate of incorporation contain certain restrictions on transfers of shares that effectively preclude the existence of a trading market in Ace shares. Each certificate of stock conspicuously notes these restrictions. No certificate representing any issued and outstanding share of any class of stock can be pledged, mortgaged, hypothecated, sold, assigned, or transferred without the prior consent of the company, and, under certain circumstances, such as certain terminations of membership caused by the closing down of a retail outlet, transfers may be made only to Ace. Under other circumstances, transfers may be made to dealers having a membership agreement with Ace. You have represented, however, that in virtually every proposed transfer of ownership of a store, the existing Ace dealer sells his or her stock back to Ace and that in the rare instance where a sale or transfer from an existing dealer to a new dealer occurs, the sale or transfer is always made at par value. Transfers to Ace may be made only at par value in the case of Class A stock or at an amount per share equal to the per share price last established by the Ace Board of Directors as the purchase price for shares of Class C stock. You have stated that all purchases of Class C stock have been and will be made at par value. In addition, although redemption provisions may be applicable to certain shares of Class C stock, you have advised that Ace has not redeemed such shares in the past and does not anticipate doing so in the future.

Sales of Ace stock are made by Ace officers to dealers whose applications for Ace memberships have been accepted by Ace. No commission, bonus, or other separate compensation will be paid to any officer of Ace or other Ace employee in connection with the sale of Class A or Class C stock. You have stated, moreover, that

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no public solicitation or advertisements will be used in connection with the sale of Ace Class A or Class C stock.

Based on the foregoing understanding, the staff of the State Securities Board will not recommend any action to require registration of Ace Class A or Class C stock offered and sold in Texas in accordance with the arrangement set forth above. In addition, the staff will recommend no action to require registration of Ace, its officers or other employees engaged in the offer or sale of Ace stock.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely on the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the no-action position stated above would be void.

I trust this letter answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

Rada Lynn Potts  
General Counsel