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## Texas State Securities Board

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April 7, 2003

Mr. Michael P. Johnson  
Lanier Ford Shaver & Payne P.C.  
200 West Side Square  
Suite 5000  
Huntsville, Alabama 35801

RE: Associated Pharmacies, Inc.

Dear Mr. Johnson:

This is in response to your letter dated November 13, 2002, and received by this Agency on November 18, 2002. Your letter was supplemented by a letter dated April 4, 2003, and received by facsimile on the same date.

Your letter and supplemental materials indicate that Associated Pharmacies, Inc. ("API"), an Alabama corporation, was formed for the purpose of enabling pharmacists to aggregate their purchasing power when negotiating contracts with manufacturers and wholesaler distributors of pharmaceuticals and medical supplies. According to your letter, API intends to solicit new members from pharmacies located in Texas. Your letter indicates that a potential member must complete an application and submit it to the Board of Directors of API ("Board") along with the membership fee that is currently at \$2,500.00. If the Board accepts the pharmacy's application, API will issue a no par value Certificate of Membership and Participation ("Certificate") to the pharmacy in its name. Each member of API ("Member") is allowed only one Certificate and each Certificate confers the right to one vote. Moreover, each Member who holds a Certificate is authorized to receive a Patronage Refund and a Patronage Dividend from API.

Your letter states that a Member's Patronage Refund is paid based on the proportional amount of each category of pharmaceuticals and medical supplies that patron purchases. API retains the remaining rebates to provide operating capital and pay its overhead expenses. Any funds that are remaining, after retaining fund for adequate capital and operating reserves, are distributed to the Members of API in the form of Patronage Dividends. Patronage Dividends are based upon the amount of purchases such Member has made during the calendar year relative to the purchases made by all of the other Members.

According to your letter, the Certificates are non-negotiable and non-transferable. Each Certificate is also appropriately marked with a restrictive legend to reflect the restriction on transfer. You stated that Certificates may only be sold back to API. If API has the financial ability to purchase the Certificate, the Member will receive the amount of the Member's original membership fee for the

Mr. Michael P. Johnson  
April 7, 2003  
Page 2

Certificate. If API is unable to purchase the Member's Certificate, then the Member must retain it until API is able to purchase the Certificate. Your letter further states that Members do not have the right to pledge or hypothecate their Certificates.

According to your letter dated April 4, 2003, the executive officers of API (i.e., the Chief Executive Officer, President, Vice Presidents, Secretary, and Treasurer) (collectively, the "Officers") are the only persons authorized by the Board to solicit prospective members to purchase Certificates. The Officers receive no commission on the sale of the Certificates, nor do the Officers receive any other benefit, either directly or indirectly, as additional compensation for the sale of Certificates.

Based on the foregoing understanding, the staff of the State Securities Board will recommend no action to require registration of the Certificates. In addition, the staff will recommend no action to require registration of API's executive officers involved in soliciting pharmacies in Texas for potential membership in API, as described above.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon 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 information answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

David Weaver  
General Counsel

DW/at