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ARKANSAS SECURITIES DEPARTMENT

March 29, 2005

Mr. John C. Lessel
11601 Pleasant Ridge Road, Suite 301
Little Rock, AR 72212

Re: Heartland Pharmacy Alliance Associates, Inc.
No. 05-90000332-NA003

Dear Mr. Lessel:

The Arkansas Securities Department (the "Department") is in receipt of your request dated March 10, 2005 on behalf of Heartland Pharmacy Alliance Associates, Inc. ("HPAA" or the "Company") that the Department issue a no-action letter determining that the Class A and Class B Certificates of membership in HPAA (individually, a "Certificate" and collectively, the "Certificates") are not "securities" within the meaning of the Arkansas Securities Act (the "Act").

In support of your request, you have represented in correspondence to the Department the following facts:

1. HPAA is an Arkansas nonprofit mutual benefit membership corporation formed under the Arkansas Nonprofit Corporation Act of 1993 (the "Nonprofit Act") that will operate on a cooperative basis. Under the provisions of the Nonprofit Act, HPAA was formed for any and all lawful purposes in general but specifically for the purpose of engaging in the conduct of a pharmacy sales and merchandise business operating on a cooperative basis. HPAA's primary purpose is to allow independent retail pharmacists to join together to aggregate their buying power from pharmaceutical and other manufacturers and wholesalers.
2. Each member of HPAA must purchase both one Class A and one Class B Certificate at prices set by the directors. Under the Articles and Bylaws, the member's Certificates may be redeemed under certain circumstances. In all circumstances and assuming sufficient assets of the corporation to legally make the distribution, the Class A Certificate will be redeemed for the price at which it was purchased. If a redemption is prompted by the voluntary withdrawal of the member or the involuntary removal of the member, the redemption price of the Class B Certificate is \$1. Under other circumstances, the redemption price of the Class B Certificate will be that percentage of the corporation's net worth as the percentage of business conducted by the redeemed

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member in the twelve months preceding the redemption. Under this alternative valuation, the price the redeemed member receives for his Class B Certificate is dependent upon the member's own participation in the purchasing programs provided by HPAA.

3. No dividends are payable on any Certificates except for patronage dividends payable to Class A Certificates as defined in Subchapter T of the Internal Revenue Code, Sections 1381-1388. A patronage dividend allocates to each member of the corporation his pro rata share of the corporation's net earnings based upon the member's volume of business with the corporation. The source of patronage dividends will include rebates on generic drugs and payments made by the vendors to the corporation based upon the volume of business HPAA members have with the vendor. Thus, the "return" the member receives is dependent upon his own actions and he is not looking to the actions of others to receive the benefit of his purchase of the Certificates.

4. The Articles were filed on November 24, 2004 and the Bylaws were adopted on February 23, 2005 at the organizational meeting of the directors. As of March 10, 2005, no Class A or Class B Certificates were sold nor had any offers to sell been made to any person.

5. The directors wish to offer to retail pharmacists within Arkansas an opportunity to become members of HPAA. The initial group to whom the offer is intended to be made are the members of Heartland Pharmacy Alliance, LLC ("HPA"), an Arkansas limited liability company that is in the process of dissolving and liquidating. The members of HPA are registered pharmacists or entities owned and controlled by registered pharmacists who are operating retail pharmacies in Arkansas. The offering price of the Class A and Class B Certificates to the members of HPA will be \$750 and \$250, respectively. No remuneration will be paid to any person based upon the sale of the Class A and Class B Certificates.

6. The directors intend to extend offers of the Class A and Class B Certificates to other pharmacists who are purchasing products from the corporation's contracted vendors. To become a member of HPAA, one must either directly or indirectly engage in the operation of a retail pharmacy and must be approved by a 2/3rds vote of the directors. In addition, the board has the flexibility to change the price of the Class A and Class B Certificates. However, the redemption value of the Class A Certificate is always equal to its purchase price and the redemption value of the Class B Certificate will vary as noted in paragraph 2 above.

7. The Articles and Bylaws provide for one-member one-vote election of directors from geographical regions. Transfers of ownership may only be authorized by the directors and any transferee must meet the requirements of membership.

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Your position is that the Certificates as described above are not securities within the meaning of the Act. You point out the following facts and circumstances:

A. HPAA is organized as a nonprofit corporation under the Nonprofit Act and will operate for the mutual benefit of its members. The Certificates, while having some characteristics of stock in a for profit corporation, such as voting, redemption and liquidation rights, do not create any equitable ownership in the corporation except under very limited circumstances of redemption of the Class B Certificates. Even in that situation, the value of the Class B Certificate is predicated upon the member's own participation in utilizing the corporation's vendors and services, not the actions of others.

B. The Class A Certificates have no appreciation potential at all. Under all redemption circumstances, the member receives only a return of the amount paid for the Class A Certificate.

C. The Certificates are subject to restrictions on transfer. Any transferee must meet the qualifications for membership in the corporation and must be approved by a super majority of the directors. Accordingly, no market should exist for the Certificates and no person who is not engaged in the retail pharmacy business may become a member.

D. Only patronage dividends are allowed with respect to the Class A Certificates. No dividends are allowed with respect to the Class B Certificates. Patronage dividends are dependent upon the member's own volume of business with the corporation and its designated vendors, unlike a share dividend which is only dependent upon the number of shares owned.

E. Operating on a cooperative basis is a well recognized method of organizing persons engaged in similar businesses to create buying groups and other economies of scale. Membership in such an organization is part of engaging in the underlying trade or business and not an investment in the membership for gain arising from an increase in the investment's value.

F. The Certificates are not securities even in the broadest sense of the word as interpreted by the United States Supreme Court in *Securities and Exchange Commission v. W. J. Howey Co.*, 382 U.S. 293 (1946), which was applied in Arkansas in *Schultz and Watkins v. Rector-Phillips-Morse*, 261 Ark. 769 (1997). Critical to finding a security in these cases is that the benefits from the purchase of the interest at issue was to be derived from the efforts of others, and not the purchaser. In this instance, any "profit" realized by the member of HPAA will be based upon his own purchasing volume as compared to the purchasing volume of all members. Here the net earnings of HPAA will come from rebates on generic drugs and payments made by the vendors to the

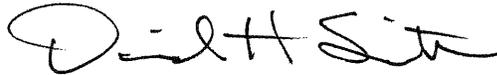
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corporation based upon the volume of business HPAA members have with the vendor. Thus, the member controls his realization of "profits" and is not relying upon others to create an investment profit to him from his purchase of the Class A and Class B Certificates.

Based upon your representations, the Department will not recommend any enforcement action to the Arkansas Securities Commissioner regarding the registration of the Certificates in HPAA if the organization and operation of the corporation is carried out as set forth in your letter and attachments.

Please note that the position of the Department is based solely upon the representations made to us in your correspondence and applies only to the transactions identified herein. Different facts or circumstances might, and often would, require a different response. The position expressed deals only with anticipated enforcement action by the Department and does not purport to be a legal opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. H. Smith". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

David H. Smith
Staff Attorney