

DEPARTMENT OF COMMERCE
DIVISION OF SECURITIES

Protecting Investors; Promoting Commerce

Michael O. Leavitt
Governor

Douglas C. Borba
Executive Director

S. Anthony Taggart
Division Director

160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760
(801) 530-6600 • FAX (801) 530-6980
e-mail: security@br.state.ut.us
http://www.commerce.state.ut.us

April 6, 2001

Mr. Leonard B. Mackey, Jr.
Clifford Chance Rogers & Wells
200 Park Avenue
New York, NY 10166-0153

Re: Geode Venture Partners, LLC
File #B00257296

Dear Mr. Mackey:

This letter is in response to your request for an interpretive opinion from the Utah Division of Securities ("Division"). You asked the Division whether Geode Venture Partners, LLC ("Geode Venture") would be required to license as an investment adviser, pursuant to § 61-1-3 of the Utah Uniform Securities Act ("Act"), when Geode Venture plans to conduct investment advisory services exclusively for the Geode Venture Fund ("Geode Fund"), which will have its principal place of business in Utah. Four U.S. residents, who are founding shareholders Geode Fund, hold shares in the Fund. Additional shares of the Geode Fund will be sold only to Japanese institutional investors such as banks and insurance companies. For the reasons stated below, it is the Division's opinion that Geode Ventures would be required to obtain an investment adviser license to conduct investment advisory services for Geode Fund.

Section 61-1-3 (3)(b) of the Act states that "It is unlawful for any person to transact business in this state as an investment adviser or investment adviser representative unless a) the person is licensed under this chapter; or b) the person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of less than \$1,000,000, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the director."

The Director of the Division has not designated, by rule or order, any "other institutional investors" under § 61-1-3 (3)(b) of the Act. Accordingly, Geode Venture would only be excluded from the registration requirements if Geode Fund is an investment company as defined in the Investment Company Act of 1940; an investment adviser, federal covered adviser, broker-dealer,

Mr. Leonard B. Mackey
April 6, 2001
Page 2

bank, trust company, savings and loan association, insurance company, employee benefit plan, or governmental agency. From the facts presented in your letter, it does not appear that Geode Fund fits into any of these categories. Consequently, Geode Venture must be licensed as an investment adviser to conduct investment advisory services with Geode Fund.

Best regards,

UTAH DIVISION OF SECURITIES

A handwritten signature in cursive script that reads "Paula W. Faerber".

Paula W. Faerber
Staff Attorney

**C L I F F O R D
C H A N C E
R O G E R S & W E L L S**

**CLIFFORD CHANCE
ROGERS & WELLS LLP**

200 PARK AVENUE
NEW YORK NEW YORK 10166 0153

TEL +1 212 878 8000

FAX +1 212 878 8375

www.cliffordchance.com

Leonard B. Mackey, Jr.

DIRECT TELEPHONE 212 878-8489

DIRECT FACSIMILE 212 878-8375

leonard.mackey@cliffordchance.com

VIA OVERNIGHT MAIL

April 2, 2001

Ms. Paula Faerber
Utah Division of Securities
160 East 300 South, 2nd Floor
P.O. Box 146760
Salt Lake City, Utah 84145-6760

Re: Geode Venture Partners, LLC

Dear Ms. Faerber,

We represent Geode Venture Partners, LLC ("Geode"). On behalf of Geode, we are respectfully requesting from the Utah Division of Securities (the "Division") an interpretive opinion under Section 61-1-3(3)(b) of the Utah Code Annotated, 1953, as amended (the "Code") with respect to the investment advisory services planned by Geode. The basis for this request is that a material term, relevant to determination of Geode's need to register as an investment adviser, has not been defined in the Code or the Utah Administrative Code (the "Rules") and requires interpretation.

Geode is a limited liability company organized in the State of Utah whose sole place of business is located in Utah. The Firm plans to conduct investment advisory services exclusively for the Geode Venture Fund (the "Fund"), which is incorporated under the laws of the Cayman Islands. The Geode Venture Fund's primary investment objective is to seek long-term capital appreciation by investing primarily in equity securities of early-stage U.S. technology companies. The Fund intends to sell shares only to Japanese institutional investors, such as banks and insurance companies. Shares in the Fund will also be held by Geode and by four U.S. residents who are founding shareholders of the Fund and "accredited investors" (as defined under the Securities Act of 1933). No shares will be offered to any other U.S. residents.

We believe that Geode should be excepted from being licensed as an "Investment Adviser" in the State of Utah pursuant Section 61-1-3(3) of the Code and that it is, therefore, not required to comply with the registration provisions contained in Section 61-1-4(1)(a) of the Code. Under Section 61-1-3(3)(b), the Code allows one to serve as an investment adviser without licensing from the State of Utah when the "person's only clients in this state are...other institutional investors as are designated by rule or order of the director." We believe that the Fund qualifies as an "institutional investor," and that, therefore, since Geode's only client is the Fund, it is exempt from the licensing requirements under Section 61-1-4(1)(a).

**C L I F F O R D
C H A N C E
R O G E R S & W E L L S**

Ms. Paula Faerber
Utah Division of Securities
April 2, 2001

**CLIFFORD CHANCE
ROGERS & WELLS LLP**

Page 2

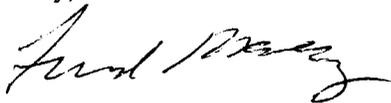
The Geode Venture Fund is a venture capital fund. Such funds are commonly understood in the business community to be a form of institutional investor since they are managed by financial institutions (i.e., an investment adviser), and make investments reflecting the sophistication and experience of their investment advisers.

In addition, with the exception of the founding shareholders of the Fund, all of the Fund's investors will be institutional investors. Since Geode would be allowed to advise these institutional investors directly without the necessity of registration under Section 61-1-3(3)(b), we believe that Geode should be permitted to advise these same institutional investors indirectly through the Fund. Accordingly, we respectfully request that Geode be allowed to advise the Fund without registering as an investment adviser as allowed under section 61-1-3(3)(b).

Finally, with respect to Rule 164-25-5, Geode represents that there is no legal action, judicial or administrative, which relates, directly or indirectly, to the facts set forth above.

If you require additional information or have any questions about this request, please do not hesitate to contact me. We have enclosed our check in the amount of \$120.00 in payment of the filing fee for this request. Thank you for your consideration.

Sincerely,



Leonard B. Mackey, Jr.