



State of Utah
DEPARTMENT OF COMMERCE
Division of Securities

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160 East 300 South
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Salt Lake City, Utah 84145-0808
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June 8, 1992

Mr. James F. Wood
Sherman & Howard
3000 First Interstate Tower North
633 Seventeenth Street
Denver, CO 80202

Re: Geological Society of America Foundation File #002-4816-21/A14167-21

Dear Mr. Wood:

This letter is in response to your letter dated June 1, 1992, regarding your request for a no-action letter for the proposed establishment of a pooled income fund and the soliciting of donations from residents of Utah by the Geological Society of America Foundation. Such transaction is more fully described in your letter.

You asked the Division of Securities ("Division") to address the following question:

1. Whether solicitation and acceptance of donations to the pooled income fund, which satisfies all the requirements of Section 642(c)(5) of the Internal Revenue Code and of SEC Release No. 33-6175, requires registration in Utah?

It is the opinion of the Division that the solicitation and acceptance of donations to the pooled income fund, as described in your letter, does not require registration in Utah.

In arriving at this position the Division notes, in particular, the following representations:

- (a) The pooled income fund will satisfy all the requirements of Section 642(c)(5) of the Internal Revenue Code, and of SEC Release No. 33-6175.
- (b) Each person who is solicited for donations will receive an offering brochure containing a detailed statement of the relevant facts.

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- (c) Any person soliciting contributions to the fund is either a volunteer, or a person who is employed in the public charity's overall fund-raising activities and who is not compensated on the basis of the amount of gifts transferred to the pooled income fund.

Accordingly, the Division will not recommend any enforcement action if the solicitation and acceptance of donations to the pooled income fund is effected as described in your letter.

Because this position is based upon the representations made to the Division of Securities it should be noted that any different facts or conditions of a material nature might require a different conclusion. Further, this response does not purport to express any legal conclusion on the question presented.

Please note that this order relates only to the referenced transaction and shall have no value for future similar offerings.

Very truly yours,

EARL S. MAESER, DIRECTOR
UTAH DIVISION OF SECURITIES



Steven J. Nielsen
Director of Registration

jmj



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June 1, 1992

Utah Department of Commerce
Division of Securities
160 East 300 South
P.O. Box 45808
Salt Lake City, Utah 84145-0808

Re: Request for Interpretive Opinion

Dear Sir/Madam:

Geological Society of America Foundation (the "Foundation") is establishing a pooled income fund and is interested in soliciting donations from residents of Utah. The pooled income fund will satisfy all requirements of Section 642(c)(5) of the Internal Revenue Code, and each solicitation would be accompanied by a description of the fund which satisfies the requirements of SEC Release No. 33-6175. A copy of the Offering Brochure with Exhibits A, B-1 and B-2 is enclosed.

Under the Release, a copy of which is enclosed, the SEC has taken the position that no registration of interests in a pooled income fund will be required under the Securities Act of 1933, the Securities Exchange Act of 1934, or the Investment Company Act of 1940. The SEC has justified its position in the Release primarily because of the fact that a contribution to pooled income funds is motivated by "donative intent," as opposed to investment intent.

We respectfully request that the Utah Division of Securities take a "no-action" position with respect to the Foundation's solicitation and acceptance of donations to the pooled income fund from residents of Utah. The following information is provided pursuant to R164-25-5(3)(a) of the Utah Blue Sky Regulations:

1. Two copies of this request and \$120.00
2. The first two paragraphs of this letter provide a brief summary of the federal statutory and regulatory provisions which apply. **We request this**



review pursuant to Rule 162-25-5 No-action letters and interpretive opinions.

3. The Offering Brochure contains a detailed statement of the relevant facts.
4. *Our Firm believes that there will be no adverse effect upon the public interest resulting from the granting of this request and that no problem exists because, in addition to the facts described above, each person soliciting gifts through the fund would be a volunteer or would be employed by the public charity and would receive no remuneration or other special compensation based on the amount of gifts transferred to the income fund. The very nature of this transaction will protect the public interest.*
5. Our client has authorized us to represent that the transaction described is not directly or indirectly the subject of any pending or judicial or administrative proceeding.
6. The Foundation has sought indications of interest from its members. The Foundation has not made or accepted any offers.

If you are unable to take the "no-action" position requested above, we respectfully request your concurrence that the solicitation and acceptance of contributions to the Fund is exempt from registration under Section 61-1-14(l)(h)(i) of the Utah Code Annotated, 1953, as amended.

If you need additional information about the Foundation or its proposed solicitation and acceptance of donations to the Fund of interests in pooled income funds,



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please call Robert L. Fuchs at (303) 447-2020 or 571-0885. Also, please feel free to call me if you have any questions or comments.

Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "James F. Wood".

James F. Wood

Enclosures

cc: Robert L. Fuchs