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Governor

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Lieutenant Governor

State of Utah
Department of Commerce
Division of Securities

FRANCINE A. GIANI
Executive Director

THAD LEVAR
Deputy Director

WAYNE KLEIN
Director of Securities

January 24, 2007

Mark A. Cotter
RAY QUINNEY & NEBEKER
P.O. Box 45385
36 South State Street, Ste. 1400
Salt Lake City, UT 84111

Re: Education CRA Management and Education CRA Fund, LLC
Request for No-Action Letter

Dear Mr. Cotter:

The Utah Division of Securities ("Division") has reviewed your January 19, 2007 request for a no-action letter concerning Education CRA Management ("Manager") and Education CRA Fund, LLC (the "Fund"). Your request for a no-action letter from the Division is authorized by Section 61-1-25(5) of the Utah Uniform Securities Act ("Act") and Utah Administrative Code Rule R164-25-5.

Your letter requests that the Division take a no-action position with respect to activities contemplated by Manager and the Fund, specifically, 1) whether Manager must be licensed as an investment adviser; 2) whether Manager's officers, directors, and certain other employees or associated persons must be licensed as investment adviser representatives; and 3) whether the offer and sale of membership interests in the Fund are exempt from registration under the Act.

Based upon the representations made in your letter, the staff of the Division will not recommend any enforcement or administrative action, should the transactions proceed as outlined in your request.

We note that in your discussion of item one, your letter raises the question to what degree the Division looks through a private equity fund to each owner of shares or interests in such fund as the "client" for purposes of the Act. As you indicate, in the Division interpretive opinion of May 13, 2004, *Foresee Strategies Fund, L.P. and Foresee Management LLC*, the Division stated that with respect to performance-based compensation, the Division looks through the fund to the individuals and entities investing in the fund, and views each as a separate client of the fund manager. Performance-based compensation is not at issue in your inquiry. The Division,

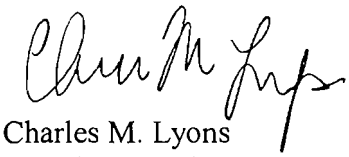
however, takes this opportunity to state its position that the "look through" approach is not limited to the context of performance-based compensation. Rather, the presumption is that in determining who the clients of a private equity fund are, as a general matter, the Division will look through in the manner described in the *Foresee* opinion.

With the exception of the position statement in the preceding paragraph, this response does not purport to express any legal conclusions regarding the applicability of statutory or regulatory provisions of federal or state securities laws to the questions presented. It merely expresses the position of the Division staff on enforcement or administrative actions.

As this recommendation is based upon the representations made to the Division, any different facts or conditions of a material nature might require a different conclusion. Furthermore, this no-action letter relates only to the transactions described above and will not apply to future similar transactions. Finally, the issuance of a no-action letter does not absolve any party from complying with the anti-fraud provisions contained in Section 61-1-1 of the Act.

Very truly yours,

UTAH DIVISION OF SECURITIES



Charles M. Lyons
Securities Analyst

January 19, 2007

VIA HAND DELIVERY

R. Wayne Klein, Director
UTAH DIVISION OF SECURITIES
160 East 300 South, 2nd Floor
Salt Lake City, Utah 84111

Re: Education CRA Management
Education CRA Fund, LLC

Dear Mr. Klein:

We represent Education CRA Management, a Utah not for profit corporation ("Manager"), and Education CRA Fund, LLC, a Delaware limited liability company (the "Fund"). On behalf of Manager and the Fund, we are respectfully requesting a no-action letter from the Utah Division of Securities (the "Division") under Section 61-1-25(5) of the Utah Uniform Securities Act, as amended (the "Utah Securities Act"), and Rule 164-25-5 of the Utah Administrative Code.

On behalf of the Fund and the Manager, we are requesting that the Division take no enforcement action if:

1. The Manager does not register as an "investment advisor" under the Utah Securities Act in reliance upon the Section 61-1-3(3)(b) exemption from the investment advisor licensure requirement;

2. The Manager's officers and directors, as well as persons occupying a similar status or performing similar functions, who are employed by or associated with Manager and who make recommendations or render advice regarding the Fund's investments in securities or otherwise perform the functions described in Section 61-1-13(1)(p) relative to the Fund's investments in securities, do not register as "investment advisor representatives" under the Utah Securities Act; and

3. The Fund offers and sells its securities to "CRA Financial Institutions" (as described below), each of which will qualify as a "bank," "savings and loan association" or "other institution," as those terms are defined in Rule 501(a)(1) of Regulation D promulgated under the Securities

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Act of 1933, as amended (the "1933 Act"), in reliance upon the Section 61-1-14(2)(h) transactional exemption from the registration requirements of the Utah Securities Act.

We believe this no-action letter request is necessary since: (i) the terms "clients," "banks" and "savings and loan associations" are not defined in Section 61-1-3(3)(b) of the Utah Securities Act and (ii) the terms "bank," "savings institution," and "other financial institution" are not defined in Section 61-1-14(2)(h). Further, those terms are not defined in the generally applicable definitions of Section 61-1-13 or in the Utah Administrative Code. As a result, it is unclear whether Manager's "client" for purposes of investment advisor and investment advisor representative regulations is the Fund or each of its CRA Financial Institution investors. Also, although seemingly obvious from a common usage point of view, the law is not clear as to whether each and every type of CRA Financial Institution (as defined below) qualifies as a "bank," "savings and loan association," "savings institution," or "other financial institution" as used in the applicable statutes.[1] We therefore submit this request that the Division take no enforcement action against the Fund or its Manager under the circumstances described herein.

Relevant Statutes

1. Under Section 61-1-3(3) of the Utah Securities Act, it is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless: (a) the person is licensed under this chapter; or (b) the person's only *client*s 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 not 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. (italics added)

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[1] We do note, however, that the Division has already determined that Utah-chartered industrial banks qualify as a "bank" for purposes of applying the exclusion from the definition of broker-dealer found in Section 61-1-13(3)(c) of the Utah Securities Act. See, Utah Division of Securities' Interpretive Opinion (August 18, 2004).

2. Under Section 61-1-14(2)(h), "any offer or sale to a *bank, savings institution*, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or *other financial institution* or institutional investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity" is not required to be registered under Section 61-1-7 of the Utah Securities Act. (italics added)

Background Information

Manager

Manager is a not for profit corporation organized in the State of Utah which maintains, and intends to maintain, its sole place of business in the State of Utah. Manager expects to qualify as a tax-exempt organization under Internal Revenue Code Section 501(c)(4). Manager intends to render services as an "investment advisor"[2] for the Fund in exchange for investment advisory fees calculated as a percentage of the value of the Fund as of the last day of each calendar quarter.

The Manager has been organized by the University of Utah's David S. Eccles School of Business ("David Eccles School of Business"), and it is expected, if and to the extent Manager has net cash flow (from its investment advisory fees after payment of all expenses, establishment of adequate reserves, etc.), that the Manager will make charitable contributions to the David Eccles School of Business, consistent with its status as a not for profit corporation and expected 501(c)(4) status.

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[2] "Investment advisor" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. Section 61-1-13(o), Utah Uniform Securities Act.

At present, Manager intends to render services as an "investment advisor" exclusively for the Fund, although it may in the future render services as an "investment advisor" for other clients.[3]

The Fund

The Fund is organized as a limited liability company under the laws of the State of Delaware. The Fund is a private equity fund or investment vehicle for FDIC-insured financial institutions seeking investment credit under the Community Reinvestment Act of 1977, as amended ("CRA"). The Fund intends to make investments that have, as their primary purpose, "community development" as that term is defined by CRA, thereby providing to Fund investors the ability to receive CRA investment credits with respect to investments in the Fund. In selecting investments which meet this primary investment purpose, the Fund will seek investments that provide a reasonable level of current income consistent with the preservation of capital.

The Fund will primarily invest in a diversified mix of marketable fixed-income securities that are mortgage-backed or mortgage-collateralized with mortgage loans on properties located in the "assessment areas" (as also defined by CRA) of Fund investors and, to a lesser extent, will seek diversification by investing in certain non-marketable, private placement mortgage-backed or real estate related securities, securities of small business investment companies (SBICs) and private equity funds that satisfy "qualified investment" criteria for CRA purposes. The Fund will also, to a lesser extent, make other investments which are not, standing alone, qualified investments for CRA purposes.

The Fund has been organized by the David Eccles School of Business, and the Fund will seek to indirectly provide the ancillary benefit of real world educational experience for David Eccles School of Business students enrolled in relevant classes.

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[3] Manager acknowledges that, if and in the event it renders "investment advisor" services for other clients in the future, it will at that time be required to reevaluate its reliance upon exemptions from licensure under the Investment Company Act of 1940 and exemptions from investment advisor licensure under the Utah Securities Act.

The Fund intends to offer and sell its limited liability company membership interests ("membership interests") in transactions exempt from the registration requirements of the 1933 Act, and the Utah Securities Act, as amended. The Fund intends to offer and sell its membership interests only to certain FDIC-insured financial institutions, which we have further defined as "CRA Financial Institutions" below.

In addition to reliance upon the transactional exemptions from the registration requirements covered by Section 4(2) and Regulation D Rule 506 under the 1933 Act and Sections 61-1-15.5(2) (federal covered securities) under the Utah Securities Act, the Fund intends to rely upon the registration exemption set forth in Section 61-1-14(2)(h). Section 61-1-14(2)(h) provides an exemption from the registration requirements for "any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity."

The Fund intends to rely on the provisions of Section 3(c)(1) of the Investment Company Act of 1940 such that it will not be required to register as an "investment company" under the Investment Company Act of 1940. The Section 3(c)(1) exemption provides that a private equity fund (such as the Fund) is not an "investment company" if its "outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons" and it "is not making and does not presently propose to make a public offering of its securities."

In addition, we believe the Fund constitutes a "private investment company" for purposes of the Division's investment advisor performance-based compensation rules set forth in R164-2-1. R164-2-1(B)(3)(b) defines a "private investment company" as a company that "would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that act."

CRA Financial Institutions Only

The Fund's membership interests will be offered and sold only to banks or other financial institutions that are (i) "accredited investors" (as such quoted term is defined in Rule 501(a)(1) of Regulation D promulgated under the 1933 Act) and, specifically, a "bank," "savings and loan association" or "other institution" as defined therein; and (ii) FDIC-insured and therefore subject to the CRA investment provisions. More particularly, the membership interests will be offered and sold only to the following types of banks or other financial institutions that are "accredited investors" ("CRA Financial Institutions"):

1. State banks chartered, regulated, supervised and examined by Utah Department of Financial Institutions (or comparable state agency having jurisdiction over banks and other financial institutions in its home state);

2. National banks chartered, regulated, supervised and examined by the Office of the Comptroller of the Currency (OCC);

3. Utah industrial banks chartered, regulated, supervised and examined by the Utah Department of Financial Institutions (or comparable state agency having jurisdiction over banks and other financial institutions in its home state);

4. State savings and loans chartered, regulated, supervised and examined by the Utah Department of Financial Institutions; and

5. Federal savings and loans and out-of-state federal savings and loans with Utah branches which are chartered, regulated, supervised and examined by the Office of Thrift Supervision (OTS).

Legal Discussion

No-Action Request #1

The term "client" is not defined in either the Utah Securities Act or the Utah Administrative Code rules promulgated under the Utah Securities Act.

If the Fund is the "client" of the Manager for purposes of the Section 61-1-3(3)(b) exemption, the Manager will be required to register as an "investment advisor" under the Utah Securities Act. This is because the

Fund does not qualify as one of the exempt client types specified in Section 61-1-3(3)(b) (e.g, the Fund is not an investment company as defined in the Investment Company Act of 1940 (because it is a 3(c)(1) fund), an investment adviser, a federal covered adviser, a broker-dealer, bank, trust company, savings and loan association, insurance company, employee benefit plan, governmental agency or instrumentality or other institutional investor).

However, each of the Fund's investors will be a "CRA Financial Institution" which we believe, as outlined above, should qualify as one of the exempt client types specified in Section 61-1-3(3)(b) (e.g., as a "bank" or "savings and loan association"). Further, the Fund's membership interests will be offered and sold only to "accredited investors" (as such quoted term is defined in Rule 501(a) of Regulation D promulgated under the 1933 Act) and, specifically, "banks," "savings and loan associations" or "other institutions" as defined therein. We believe that the purpose and intent of the investment advisor licensure requirement, including the licensure exemption set forth in Section 61-1-3(3)(b), will be satisfied if the Division "looks through" the Fund to its ultimate owners (the CRA Financial Institutions) as the "clients" of the Manager.

There is Division precedent[4] for "looking through" a private equity fund to its owners as the "client" in interpreting regulations limiting performance-based compensation for investment advisors under the Utah Securities Act. In particular, in *Foresee Strategies Fund L.P. and Foresee Management LLC*, Utah Division of Securities Interpretive Opinion (May 3, 2004), the Division took the position that Foresee Strategies Fund was not a single client for purposes of the performance based fee requirements of R164-2-1. Instead, the individuals and entities who invested in Foresee Strategies Fund were considered the separate "clients" of the fund manager. Stated differently, the Division "looked through" Foresee Strategies Fund to each of its individual and entity owners in order to apply certain assets under management and net worth tests to each separate "client." Since those tests by their terms applied only to a "natural person" or a "company" and, because Foresee Strategies Fund was neither a "natural person" nor a "company,"[5] the Division "looked through" Foresee Strategies Funds to

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[4] Any precedential effect is, of course, limited as set forth in R164-25-5(A)(4)).

[5] Under R164-2-1(B)(3), the Foresee Strategies Fund was not considered a "company" because it was a "private investment company" exempted from federal investment advisor registration under section 3(c)(1) of the Investment Company Act of 1940.

each of its individual and entity owners for purposes of the performance based fee client requirements.

We believe this same rationale supports our request that the Division look through the Fund to its ultimate owners, the "CRA Financial Institutions" that invest in the Fund, for purposes of the Section 61-1-3(3)(b) exemption from the investment advisor licensure requirements. In our case, we believe the Fund will not be a "company" since it will be a "private investment company" exempted from federal investment advisor registration under section 3(c)(1) of the Investment Company Act of 1940.

However, there are contrary legal positions, albeit in factually different circumstances, to be considered by the Division in connection with this request. First, the federal Investment Advisors Act of 1940 would generally not "look through" the Fund to its ultimate owners in this situation because the term "client," which is defined in Rule 203(b)(3)-1(a)(2)(i) promulgated under the Investment Advisors Act of 1940, provides that a limited liability company is deemed a single client if the entity receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners...." Under the federal definition of "client," the Fund would be the "client" since investment advice will be provided by Manager only to the Fund (and not to its member-owners (investing CRA Financial Institutions)). Despite that general SEC "single client" rule, if the Fund receives investment advice from Manager based on the individual investment objectives of its CRA Financial Institutions, the SEC staff might look through the Fund to each CRA Financial Institution as the client. There is SEC guidance (of uncertain application in our judgment) which suggests the single client rule *may* be inapplicable.[6]

Second, in *Geode Venture Partners, LLC*, Utah Division of Securities Interpretive Opinion (April 6, 2001), the Division found that that

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[6] The SEC staff has rejected the one client rule in a no-action letter involving complex reorganization circumstances where the manager was required to accommodate tax or regulatory issues specific to individual owners of a private equity fund (a factual circumstance which might be analogized to formal "side letters"). *See* Burr, Egan, Deleage & Co., SEC No-Action Letter, 1987 SEC No-Act, LEXIS 2025 (April 27, 1987). There is a factual question as to whether this position would apply to the Fund-Manager relationship (e.g., if and to the extent Manager takes into specific account the CRA "assessment areas" of its CRA Financial Institution investors in making investment decisions).

Geode Venture Partners would be required to obtain investment advisor licensure where it rendered advisory services solely and exclusively for Geode Venture Fund (which was in turn owned by both individuals and Japanese institutional investors such as bank and insurance companies). In that interpretive opinion, the Division apparently rejected Geode Venture Partners argument that the Geode Venture Fund was itself an institutional investor and further rejected Geode Venture Partners contention that, since the Geode Venture Fund would be owned by institutional investors consisting of banks and insurance companies (but also Utah resident individuals) that the underlining ownership would further solidify the Funds status as an "institutional investor."

However, the circumstances of the relationship between the Fund and the Manager in the instant case are different than the circumstances in *Geode Venture Partners*: the only investors in the Fund will be the "CRA Financial Institutions," all of which we believe are exempt client types specified in Section 61-1-3(3)(b) (namely, as "banks" or "savings and loan associations"). Each of the investors in the Fund is and will be subject to the charter, supervision, examination and oversight of the state or federal banking agencies described above. Further, each of the investors in the Fund is and will be able to make informed investment decisions such that they are not in need of the protections that would be afforded by requiring Manager to obtain Utah "investment advisor" licensure.

We believe that Manager should be exempt from licensure as an "investment adviser" in the State of Utah pursuant to Section 61-1-3(3)(b) of the Utah Securities Act and that it therefore should not be required to comply with the investment advisor registration provisions contained in Section 61-1-4(1)(a) of the Utah Securities Act. As such, we respectfully request that the Division "look through" the Fund to its ultimate investors (the CRA Financial Institutions) and take no enforcement action if the Manager does not register as an "investment advisor" under the Utah Securities Act by virtue of the Section 61-1-3(3)(b) exemption from the investment advisor licensure requirement.

No-Action Request #2

If Manager is not required to register as an "investment advisor" under the Utah Securities Act, its officers and directors, as well as persons occupying a similar status or performing similar functions, who are employed by or associated with Manager and who make recommendations or render advice regarding the Fund's investments in securities or otherwise perform the functions described in Section 61-1-13(1)(p) relative to the

Fund's investments in securities, should not be required to register as "investment advisor representatives" under the Utah Securities Act.

This follows from the Section 61-1-13(1)(p) definition of "investment adviser representative" as any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, who . . . [are] employed by or associated *with an investment adviser who is licensed or required to be licensed under this chapter.*" (italics added). If no-action relief is granted such that Manager is not licensed or required to be licensed under the Utah Securities Act, Manager's investment advisory personnel should similarly not be required to register as investment advisor representatives.

We respectfully request that the Division take no enforcement action if the Manager's officers and directors, as well as persons occupying a similar status or performing similar functions, who are employed by or associated with Manager and who make recommendations or render advice regarding the Fund's investments in securities or otherwise perform the functions described in Section 61-1-13(1)(p) relative to the Fund's investments in securities, do not register as "investment advisor representatives" under the Utah Securities Act.

No-Action Request #3

As described above, we believe that each type of "CRA Financial Institution" qualifies as a "bank," "savings institution," or "other financial institution" as used in the Section 61-1-14(2)(h) exemption from registration.

On behalf of the Fund, we are requesting that the Division take no enforcement action if the Fund offers and sells its securities to each of the CRA Financial Institutions described above, all of which are "accredited investors," under the Section 61-1-14(2)(h) transactional exemption from the registration requirements of the Utah Securities Act and in reliance upon each specified type of CRA Financial Institution qualifying as a "bank, savings institution, trust company, . . . or other financial institution or institutional investor . . ." under such exemption.

Miscellaneous

With respect to Rule 164-25-5, the Manager and the Fund 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 previously submitted our check in the amount of $120.00 in payment of the filing fee for this request. Thank you for your consideration.

Sincerely,

RAY QUINNEY & NEBEKER P.C.

Mark A. Cotter

MAC/jd
cc: George Robinson, Utah Division of Securities
Chip Lyons, Utah Division of Securities
Benjamin Johnson, Utah Division of Securities
Education CRA Fund, LLC
Education CRA Management
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