

July 10, 1998

James A. Arpaia

VEDDER, PRICE, KAUFMAN & KAMMHOLZ

222 North LaSalle Street

Chicago, Illinois 60601-1003

Re: Request for "No-Action" Relief

No. 98-011D

Dear Mr. Arpaia:

The staff of the Arkansas Securities Department has reviewed your letter of July 2, 1998, wherein you request confirmation that the staff will recommend that the Arkansas Securities Commissioner take no action to enforce the broker-dealer/agent registration provisions of the Arkansas Securities Act, Ark. Code Ann. § 23-42-101 *et. seq.* with respect to the activities of University Alumni Funds, LLC (the "Company"). Based upon facts presented in your letter, as well as our conversations yesterday, the staff declines to recommend that the Commissioner take no action to enforce the broker-dealer/agent registration provisions with regard to the Company's proposed activities. A brief summary of those facts is set forth below.

The Company proposes to enter into an exclusive contract with National Discount Brokers (the "Broker-Dealer") to offer the brokerage services of the Broker-Dealer to the alumni of various universities. The Broker-Dealer is registered as a securities broker-dealer with the Securities and Exchange Commission ("SEC") and with all fifty states and is a member in good standing of the National Association of Securities Dealers, Inc. ("FINRA"). The Company has made application to become registered as a securities broker-dealer with the SEC and to become a member of the FINRA.

The Company will make presentations to university alumni associations in which it will, among other things, promote the idea of allowing the Broker-Dealer to offer and sell investment products to the university's alumni. When possible, representatives of the Broker-Dealer will join the Company in making such presentations. In addition, the Company will act as a "marketing consultant" to the Broker-Dealer with respect to university alumni associations that have agreed to participate. In this capacity, the Company will assist the Broker-Dealer in designing a marketing campaign, which may involve formulating a sales presentation; determining the form and frequency of communications sent to alumni, including: new releases, press releases, advertising scripts, direct mail and e-mail, and display and on-line advertising; and selecting individuals from databases maintained by the Company. The university alumni associations will provide mailing lists directly to the Company; the Company will refine and target such lists and provide them to the Broker-Dealer. The Broker-Dealer will then market its services to the alumni on the lists.

As compensation for its services, the Company will receive from the Broker-Dealer monthly payments as follows: a certain dollar amount for each customer account opened, which amount will vary based upon the number of accounts opened; a payment for each transaction effected in the introduced customers' account; a payment based on a percentage of the dollar amount of margin debit balances and free credit balances in the introduced customers' accounts; and the dollar amount of customer monies invested in money market funds.

Ark. Code Ann. § 23-42-102(3) defines "broker-dealer" to mean any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Ark. Code Ann. § 23-42-102(2)(A) defines an "agent" to include any individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. Based upon the breadth and intimacy of the Company's activities in support of the Broker-Dealer, as described herein, the staff believes it foreseeable that particular conduct of the Company would be subject to the registration provisions of the Act. Accordingly, your request for a no-action position is declined.

If you have any questions with regard to this matter, please contact me at: (501) 324-9260.

Sincerely,

BRUCE H. BOKONY  
Chief Counsel