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ARKANSAS SECURITIES DEPARTMENT

September 14, 2000

Ravi Sundara
Pranschke & Holderle, L.C.
1610 Des Peres Road
Suite 300
St. Louis, MO 63131-1813

Re: The Lutheran Church-Missouri Synod Foundation – No Action Request

No-Action No. 00-008

Mr. Sundara:

In your letter of August 9, 2000, on behalf of The Lutheran Church-Missouri Synod Foundation, you request assurance that the activities described in your letter do not constitute the issuance of investment contracts or other securities as defined under Arkansas law and that such activities do not require registration under any section of the Arkansas Securities Act. As described below, we are unable to give you this assurance.

It is our opinion that the activities described in your letter constitute the issuance of securities according to the Arkansas Securities Act, Section 23-42-102 (15). It is your position that the activities described are regulated by the Arkansas Insurance Department instead of the Arkansas Securities Department. The Arkansas Securities Act, Section 23-42-102 (15) (B) states that "security" does not include any annuity contract or variable annuity contract issued by any insurance company. The Foundation, who issues these securities, is not an insurance company. Therefore, it is the intent of the Act to include these activities as constituting the issuance of securities.

As you know, such activities of the Foundation are exempt from the federal securities laws under the Philanthropy Protection Act of 1995. However, due to the problems Arkansas has had in this area the legislature elected to amend Section 23-42-503 (a)(7) of the Arkansas Securities Act, electing not to be pre-empted by the Philanthropy Protection Act of 1995. We uphold the decision of the legislature in this area and require registration. Arkansas does, however, have an exemption to the registration requirement that may apply to the Foundation in Section 23-42-502 (a)(7).

Rule 503.01 (A)(7) of the Rules of the Arkansas Securities Commissioner sets forth the requirements for the exemption.

Should you have any additional questions regarding this matter, you can contact me directly at the number below.

Sincerely,

Paula Juels
Staff Attorney

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