OLENE S. WALKER
Governor
KLARE BACHMAN
Executive Director

State of Utah
Department of Commerce
Division of Securities

S. ANTHONY TAGGART
Division Director

May 13, 2004

Mr. Theodore M. Grannatt
Kruse Landa Maycock & Ricks, LLC
50 West Broadway, Eighth Floor
Salt Lake City, UT 84101-2034

RE: Foresee Strategies Fund, L.P. and Foresee Management, L.L.C.
File # B00411086

Dear Mr. Grannatt:

This letter is in response to your request for an interpretive opinion from the Utah Division of Securities ("Division") wherein you asked the Division to interpret provisions of the Utah Uniform Securities Act (the "Act") relating to investment adviser fees. In the alternative, you asked the Division to provide a representation that the Division would not take enforcement action if the entities function as described in your letter. For the reasons stated below, it is the Division's opinion that if the transactions are performed as described in your letter, the performance based fees would not comply with the requirements of §R164-2-1 of the Utah Administrative Code ("UAC"). In addition, the Division answers your individual questions below. Finally, the Division declines to issue a "no-action" letter based upon the representations in your letter.

Your letter describes Foresee Strategies Fund, L.P. (the "Fund") as a limited partnership organized to pool investor funds. Investors will purchase limited partnership interests in the Fund. Foresee Management, L.L.C. (the "General Partner"), will serve as the general partner of the Fund. Jemico, Inc. (the "Fund Manager"), a licensed investment adviser, will act as the investment manager to the fund. Two individuals, Jeffrey H. Collings ("Collings") and R. Bret Jenkins ("Jenkins"), collectively own a majority of both the General Partner and the Fund Manager. The General Partner and the Fund Manager have a minimum of 80% common ownership. In addition, Collings and Jenkins are the only managers of the General Partner and Collings is the only principal of the Fund Manager.

The Fund will pay the Fund Manager a management fee of two percent of assets under management. In addition, the Fund will pay the General Partner an annual performance fee of 20 percent of the excess of investment profits over historical losses, net of operating expenses, including the management fee. According to the representations in your letter, the performance-

based fee will be paid to the General Partner "for its services rendered in connection with selecting the appropriate investment adviser or advisers for the fund's resources, reviewing the administrative structure of the fund, performing the appropriate audits, bonding, and any other required functions customarily performed by the general partner of a partnership."

In addition, you have indicated that the fee to be paid to the General Partner will include the following features: the fee will be calculated and paid in accordance with the Division's rule regarding performance based fees, the fee will not be charged until all losses from prior years have been recovered by investors, and the fee will be charged on investment profit net of all operating expenses, including the management fee.

You then request that the Division advise whether the payment of the performance based fee to the General Partner as described in your letter complies with the requirements of §R164-2-1 of the UAC.

The Division is intrigued why you have asked whether payment of a performance based fee meets the requirements of the Division's rule where the fee is paid to a person that you imply is not an investment adviser or required to be licensed as an investment adviser. Subsection 61-1-2(2)(a)(i) of the Act prohibits an investment adviser from entering into an advisory contract where the investment adviser is "compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client[.]" Section R164-2-1 of the UAC provides an exception to the prohibition of subsection 61-1-2(2)(a)(i). Although only investment advisers are subject to these restrictions and the fee will be paid to the General Partner rather than the Fund Manager, the Division finds the question which you posed to be very relevant. The Fund Manager and the General Partner are under common control and have substantially common ownership. They are affiliates and the selection of the Fund Manager by the General Partner and the agreement entered between these two parties has not been accomplished at arms length. Therefore, the Division will deem the performance based fee to be paid to the General Partner to be an indirect fee to be paid to the Fund Manager. Given that the Fund Manager is a licensed investment adviser, the performance based fee must meet the requirements of section R164-2-1 of the UAC.

Paragraph R164-2-1(C) provides an exception to the prohibition against performance based fees if the requirements in paragraphs (D) through (H) are met regarding such topics as client requirements, compensation formula, additional disclosure, arms length agreement, and unlawful acts. In requesting the Division's opinion, you have asked the Division to assume that the compensation formula requirements will be met and you have focused most of your inquiry on the client requirements. For purposes of this letter, the Division will focus on the client requirement and arms length agreement; and will offer no opinion as to the remaining conditions of the rule.

Client Requirements

Paragraph R164-2-1(D) of the UAC provides the client requirements stating:

(D) Client requirements

(1) The client entering into the contract must be:

(1)(a) a natural person or a company who, immediately after entering into the contract, has at least $750,000 under the management of the investment adviser;

(1)(b) a person who the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds $1,500,000. The net worth of a natural person may include assets held jointly with that person's spouse;

(1)(c) a qualified purchaser as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 at the time the contract is entered into; or

(1)(d) a natural person who immediately prior to entering into the contract is:

(1)(d)(i) An executive officer, director, trustee, general partner, or person serving in a similar capacity of the investment adviser; or

(1)(d)(ii) An employee of the investment adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participated in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

You have argued that for purposes of this rule, the Fund will be a single client of the Fund Manager and as an entity (company) will meet the client requirements because the Fund will have at least $750,000 under management of the Fund Manager immediately after entering into the contract, or will have a total net worth of at least $1.5 million before entering into the management contract as required by subparagraph R164-2-1(D)(1)(a) or (b) of the rule. You support your argument that the Fund is a single client based on the definition of "client" found in federal law. Specifically, Rule 203(b)(3)-1(a)(2)(i) of the Investment Advisers Act of 1940, ("Advisers Act"), provides that a limited partnership 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 . . . ". However, the Division is not convinced that for purposes of Rule R164-2-1 that the definition of "client" found in Rule 203(b)(3)-1(a)(2)(i) should be used.

In its March 5, 2002 interpretive opinion directed to Kirkland & Ellis, File # B00306748, the Division recognized that for the purpose of interpreting federal preemptive provisions, that federal definitions should be used. The Division recognized that for all other purposes, the Utah definitions should apply. The present analysis does not turn on an issue of whether the Division is preempted from regulating the Fund Manager because the Fund Manager has a place of business in Utah.[1] Therefore, while provisions of federal law can be helpful in answering your questions, we should first look to Utah law to determine whether "client" has been defined. A close review of section R164-2-1 demonstrates that while the term "client" has not specifically been defined by Utah law, the Fund should nevertheless not be considered a single client of the Fund Manager.

For the Fund to meet the client requirements under either subparagraph R164-2-1(D)(1)(a) or (b), it must 1) be a "natural person" or "company," and 2) meet either the assets under management test or the net worth test. The Fund is not a "natural person." Therefore, to qualify the fund as a client, it must be a "company." For purposes of section R164-2-1, the term "company" is defined in subparagraph R164-2-1(B)(3), stating:

---

[1] Section 222(d) of the Investment Advisers Act of 1940 states:

> (d) No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser shall require an investment adviser to register with the securities commissioner of the State (or any agency or officer performing like functions) or to comply with such law (other than any provision thereof prohibiting fraudulent conduct) if the investment adviser–
>
> (1) does not have a place of business located within the State; and
>
> (2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.

Rule 222-2 provides that for purposes of section 222(d)(2), that an investment adviser may rely upon the definition of "client" provided by Rule 203(b)(3)-1 of the Advisers Act. For purposes of section 222(d)(2), the Fund would probably be considered a single client. Furthermore, if the Fund Manager did not have a place of business in Utah, the Division would be preempted from requiring the Fund Manager to license in Utah as an investment adviser and the Fund Manager would not be subject to the restrictions of section 61-1-2 of the Act.

(B) Definitions

* * *

(3) "Company" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in his capacity as such. "Company" shall not include:

(3)(a) a company required to be registered under the Investment Company Act of 1940, but which is not so registered;

(3)(b) a private investment company, for purposes of this subparagraph a private investment company is a company which 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;

(3)(c) an investment company registered under the Investment Company Act of 1940; or

(3)(d) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, which is adopted and incorporated by reference and available from the Division, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or company within the meaning of subparagraph (B)(4) of this rule.

The definition of "company" specifically provides that "company" does not include a "private investment company." Furthermore, the rule provides that "a private investment company is a company which 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." In response to the Division's inquiry about this point, you provided a letter dated December 5, 2003, in which you indicated that "[t]he Fund intends to rely on the provisions of Section 3(c)(1) of the Investment Company Act of 1940 to avoid requirements that it register as an 'investment company' and as such, be exempt from much of the compliance with the substantive provisions of the Investment Company Act." As such, the Fund meets the definition of "private investment company" and is thus not considered a "company" under subparagraph R164-2-1(B)(3).[2] Because the Fund is not a "natural person" or a "company," the

---

[2]The Division's rule is partially patterned on Rule 205-3 of the Investment Advisers Act of 1940. Rule 205-3(b) creates a similar, but not identical, criteria for determining whether the

Fund does not meet the client requirements of paragraph R164-2-1(D) and cannot be considered the single "client" of the Fund Manager. The Division takes the position that since the Fund is not a single client, the individuals and entities who invest in the Fund are each separate clients of the Fund Manager. Thus, by charging a performance-based fee to the Fund, the Fund Manager is charging a performance-based fee to each individual investor in the Fund. As such, each individual investor in the Fund, and not just the Fund itself, must meet the client requirements of paragraph R164-2-1(D).

Arm's Length Agreement

In addition to the client requirements of paragraph R164-2-1(D), paragraph R164-2-1(G) requires that any advisory contract represent an arm's length arrangement between the parties. The Fund is managed by the General Partner and the Fund Manager is hired by the General Partner. It is the General Partner's responsibility to negotiate and enter into the advisory contract on behalf of the Fund However, the General Partner and the Fund Manager are affiliates, are under common control and have substantially the same ownership. Therefore, under these circumstances, the advisory contract does not represent an arm's length arrangement between the parties and the Fund Manager does not meet the requirements of paragraph R164-2-1(G).

Limited Partner Investors

Anticipating that the Division would find that each of the individual investors of the Fund would need to meet the requirements of paragraph R164-2-1(D), you asked for guidance as to the application of the client requirements under several scenarios.

(A)

Ms. A has a 50 percent ownership in a family business valued at $1.2 million held jointly with her brother, a personal investment account with $400,000 and a 401(k) worth $700,000. Your letter requested clarification of what the Division would consider Ms. A's net worth for the purpose of the performance-based fee requirements. The Division looks to its closest related definition of net worth found in subparagraph R164-4-4(B)(3) of the UAC that states:

> **"Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting principles), deferred charges, goodwill,**

---

entity or the equity owners of the entity will be considered the client for purposes of client qualification.

franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

Based upon this definition, the Division would not include Ms. A's ownership in the family business since this asset does not appear to be readily marketable. In addition, paragraph R164-2-1(D)(1)(b) provides that "[t]he net worth of a natural person may include assets held jointly with that person's spouse." This implies that a natural person could not include assets which are held jointly with a person that is not their spouse. Ms. A's ownership in the family business is held jointly with her brother. Therefore, for purposes of this rule, Ms. A's net worth would not include her ownership in the family business. Ms. A would not meet the client requirements of paragraph R164-2-1(D).

(B)

Mr. B conveyed $1.2 million in assets to an irrevocable trust of which he was the sole trustee and his wife and direct descendants were the sole beneficiaries. Independent of the trust, Mr. B had assets, including his residence, of $1.1 million. The Division considers the trust to be a separate entity. As the grantor of an irrevocable trust, Mr. B would not be able to liquidate the assets in the trust. The Division, therefore would consider his net worth to be only what is independent of the trust, and the trust's net worth to be only what is included in the trust. As such, neither the trust nor Mr. B would meet the performance-based fee threshold. Also, please note that based on the above definition, the Division would not consider Mr. B's residence(s) to be part of Mr. B's net worth for meeting the performance-based fee threshold.

(C)

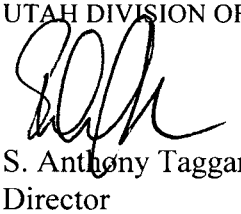
Ms. C owns interests in two family partnerships, each of which has liquid assets of $450,000. She has liquid wealth of $500,000 for a total net worth of $1.4 million. If she invested $400,000 from each partnership, your letter requested information about whether the Division would aggregate these totals for her to reach the $750,000 assets under management threshold. The Division considers each partnership to be a separate entity, and a separate investor. Therefore, for the purpose of determining the assets under management for the performance-based fee threshold, the Division would consider each partnership to have invested separately, and would not aggregate the totals.

Motivated Investor Group

The next section of your letter titled *The "Motivated Investor Group"* requests the Division's opinion on pooling individual assets so that investors meet the performance-based fee requirements as stated above. Rather than address each subsection individually, the Division believes that in each of these instances, the Division would look to the individual investor's net worth and assets under management and would not allow any pooling of funds to reach these threshold levels.

Please note that this opinion relates only to the circumstances described above. Because this opinion is based on representations made to the Division, it should be further noted that any different facts or conditions of a material nature might require a different conclusion.

Very truly yours,
UTAH DIVISION OF SECURITIES



S. Anthony Taggart
Director

KRUSE LANDA MAYCOCK & RICKS, LLC
EIGHTH FLOOR, BANK ONE TOWER
50 WEST BROADWAY (300 SOUTH)
SALT LAKE CITY, UTAH 84101-2034

ATTORNEYS AT LAW
www.klmrlaw.com

TELEPHONE: (801) 531-7090
TELECOPY: (801) 531-7091

August 29, 2003

Mr. Anthony Taggart, Director
Utah Division of Securities
160 East 300 South
Salt Lake City, Utah 84114

Re: Foresee Strategies Fund, L.P. and Foresee Management, L.L.C.
Request for interpretive and "no-action" guidance

Dear Mr. Taggart:

We have been engaged by Jemico, Inc., a registered investment adviser in Utah, to advise respecting the organization of a private equity fund that proposes to invest principally in exchange traded options, other derivative securities and the underlying securities themselves while using various hedging strategies to leverage the investment for enhanced potential returns.

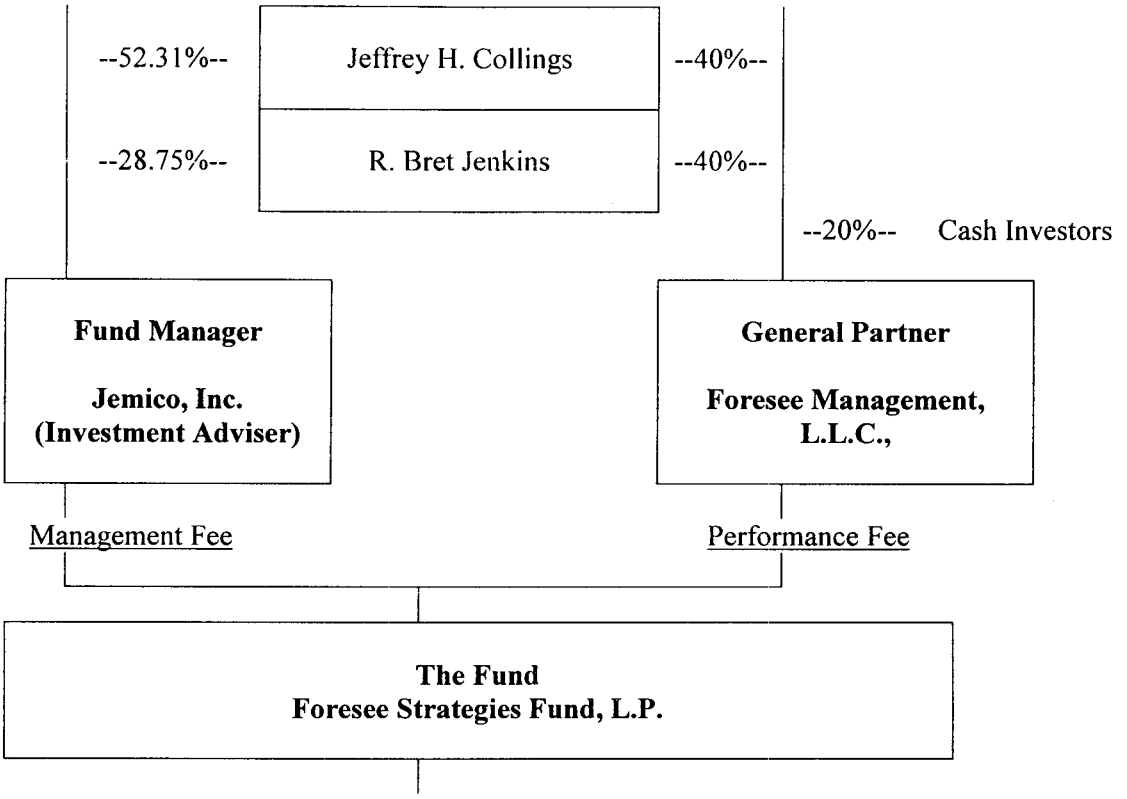
As detailed below, we are requesting interpretive guidance and confirmation that the Utah Division of Securities (the "Division") will not take enforcement action if the fund is structured and operated as outlined below. The fund will be organized as follows:

Foresee Strategies Fund, L.P., a Utah limited partnership (the "Fund"), will be organized and operated to pool funds of investors interested in pursuing the investment strategies set forth in the limited partnership agreement. Investors will purchase limited partnership interests in the Fund.

Foresee Management, L.L.C., a Utah limited liability company, will serve as the general partner (the "General Partner") of the Fund. The General Partner is a manager managed limited liability company, with two managers, Jeffrey H. Collings and R. Bret Jenkins, who also each own 40 units, or an aggregate of 80 units, of the total 100 units issued and outstanding. The holders of the remaining 20 units provided capital for costs associated with organizing the fund and will receive preferential distributions from the General Partner until their investment is recovered.

Jemico, Inc., (the "Jemico") will act as investment manager to the Fund under an investment management agreement, which will authorize the Manger to exercise discretionary authority in investments on behalf of the Fund. Jemico provides investment advice through Jeffrey H. Collings, Jemico, Inc., IARD #118013, and is owned 52.31% by Mr. Collings, the principal of the Adviser, 28.75% by Mr. Jenkins and 18.94% by an unaffiliated entity, Greenhead Capital, which is under the control of an unrelated third party. Neither Mr. Collings nor Mr. Jenkins has an interest in Greenhead Capital. Neither Mr. Jenkins nor Greenhead Capital or its controlling owner is engaged in the business of providing investment advice.

The foregoing structure is illustrated as follows:



The Fund will not be activated until it obtains a minimum of $1.0 million of capitalization.

The Fund proposes to pay the following fees:

Management Fee: The Fund will pay Jemico an annual management fee equal to up to 2.0% of the assets under management, calculated monthly and payable in advance. The partnership agreement authorizes the payment of an annual management fee of up to 2.0% of the assets under management, but the initial investment management agreement between the Fund and Jemico provides for an annual fee of only 1.0% of the assets under management. No subsequent amendment of the investment management agreement can increase the annual fee above the 2.0% maximum permitted in the partnership agreement.

This fee is designed to allow Jemico to pay ordinary operating costs associated with transactions effected on behalf of the Fund on a current basis, including administrative services related to office space, utilities, computer, telephone, other equipment, secretarial, clerical, and other normal and recurring overhead. The remaining costs relating to the purchase, sale, trade custody,

transfer, insurance of Fund assets, expenses for professional services such as legal, accounting, and third-party administrative fees are borne by the Fund itself.

Performance Fee: The Fund will pay the General Partner an annual performance fee of 20% of the excess of investment profits over historical losses, net of operating expenses, including the management fee. This fee will be paid to the General Partner for its services rendered in connection with selecting the appropriate investment adviser or advisers for the Fund's resources, reviewing the administrative structure of the Fund, performing the appropriate audits, bonding, and any other required functions customarily performed by the general partner of a partnership. The fee includes the following features:

- The fee in all cases will be calculated and paid in accordance with the applicable rules of the Division. For example, no performance fee will be charged with respect to any investor until such investor has been an investor for at least one year.

- The fee is not charged until all losses from prior fiscal years have been recovered by investors. Once any such previous losses have been recovered, the fee is calculated based on the excess of any profits over historical losses.

- The fee is charged on investment profit net of all operating expenses, including the management fee.

The sheet entitled Example of Fund Fees Charged Over Years, attached to this request, illustrates the calculation of the fees in a variety of circumstances.

This aforementioned structure, which will pay the asset-based fee to the investment adviser, Jemico, and the performance-based fee to the General Partner of the Fund, is consistent with private equity funds or so-called hedge funds structured in the industry. *See* Schell, James M., PRIVATE EQUITY FUNDS: BUSINESS STRUCTURE AND OPERATIONS, § 2.02 and § 2.02[1], Law Journal Press, New York (2003). As stated above, the General Partner and Jemico are under the common control of Mr. Collings and Mr. Jenkins. We believe that the fee separation allows each party to align its interests with the individual investors and capitalize on success only when the investors have cumulative long-term success.

We request that the Division advise whether, in its view, the payment of a performance fee, calculated as set forth above and in accordance with Division Rule 164-2-1(E), to the General Partner complies with the requirements of Division Rule 164-2-1.

I. Client Requirements for Charging a Performance Fee

1. The Fund as an Entity

As noted above, the Fund will not be activated unless and until it obtains at least $1.0 million in capitalization. Therefore, the Fund as a single client of Jemico and as an entity (company) will meet the requirements of Division Rule 164-2-1(D), which requires that investors that are charged a performance fee have at least $750,000 under the management of the adviser immediately after entering into the

management contract, or have a total net worth of the company of at least $1.5 million before entering into the management contract.

Our analysis of the Fund as a single client is not a unique position. In the rules promulgated under the Investment Adviser's Act of 1940, specifically § 203(b)(3)-1(2)(i), it appears as though the Fund could be a single client of Jemico because the Fund "receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners. . . ." The Division would apply the § 203(b)(3)-1(2)(i) "entity" test to an investment adviser located outside Utah, with respect to that adviser's Utah client, for the purpose of determining compliance with the national de minimis standard under § 222-2 of the aforementioned rules. We understand that the federal rules are not directly applicable to our specific issue, but they do appear to provide a framework for analysis, and therefore we seek your guidance in this matter.

2. The Limited Partner Investors

In addition to the requirement under Division Rule 164-2-1(D), we understand that the Division takes the position that in order for an investment adviser to charge a performance fee to an entity such as the Fund, each of its individual investors, limited partners in the case of the Fund, must also meet the requirements of Division Rule 164-2-1(D). We request further guidance as to the application of these client requirements in the following two scenarios:

(a) Attribution of Financial Resources in Affiliated Family Group

The Fund anticipates that it may encounter prospective investors that are "accredited investors" as defined in SEC Rule 501(a) as required by Rule 506 under which the Fund investments are to be sold, but that may be unable to meet the $750,000 assets under management or $1.5 million net worth requirements of Division Rule 164-2-1(D) in the specific entity that may invest. This may result from investors' desires to diversify their holdings into separate entities, plan their estate, manage their wealth, implement asset protection strategies, or fulfill other personal financial and business requirements. When aggregated, the assets under management by a group of affiliated entities under common control may exceed $750,000 or the group of affiliated entities under common control may have a net worth of greater that $1.5 million. The following illustrate the issues that may be presented:

- Ms. A has a 50% interest in a family business valued at $1.2 million held in an L.L.C. jointly with her brother; a personal investment account with $400,000; and a 401(k) through her work with $700,000. Her home and personal property are not included for the purpose of this analysis. In aggregate, Ms. A has $1.7 million in personal net worth. However, directly she does not seem to have the required $1.5 million to be qualified. We would propose that Ms. A be permitted to aggregate all of the above beneficially owned interests for the purpose meeting the $1.5 million net worth test of Division Rule 164-2-1(D).

- In implementing his estate plan, Mr. B has conveyed $1.2 million in assets to an irrevocable trust of which he is the sole trustee and his wife and direct descendents are the sole beneficiaries. Mr. B has personal wealth, independent of the trust, of business interests,

securities, and a primary and secondary residence, of $1.1 million. We would propose that Mr. B be permitted to aggregate all of the above beneficially owned interests for the purpose meeting the $1.5 million net worth test of Division Rule 164-2-1(D).

- Ms. C has inherited interests in two family partnerships, each of which has liquid assets of $450,000. She has other liquid wealth of $500,000, exclusive of the interest in her unencumbered home, for a total net worth of $1.4 million. She would like to invest $400,000 from each family partnership in the Fund for a total of $800,000. We propose that Ms. C be permitted to aggregate both partnership investments for the purpose meeting the $750,000 assets under management test of Division Rule 164-2-1(D).

Based on the foregoing, we request that you advise whether the assets under management and net worth of persons or entities under common control may be aggregated for purposes of applying the tests set forth in Division Rule 164-2-1(D). Specifically, we request that the Division advise that the Fund may aggregate, for purposes of applying the assets under management and net worth tests set forth in Division Rule 164-2-1(D), the assets and net worth of:

(i) a person,
(ii) the spouse and lineal descendants of such person having the same principal residence,
(iii) any trust or estate in which such person and any of such person's spouse and lineal descendants having the same principal residence collectively have more than 50% of the beneficial interest, and
(iv) any corporation, limited partnership, limited liability company, or other organization of which a person and any of such person's spouse and lineal descendants having the same principal residence collectively have more than 50% of the beneficial interest.

(b) The "Motivated Investor Group"

The Fund anticipates that it may encounter prospective individual investors that are unable to meet the $750,000 assets under management or $1.5 million net worth requirements of Division Rule 164-2-1(D). However, the individuals wishing to participate in the Fund and understanding the financial requirements of a performance-based fee may wish to combine their resources in order to be able to invest as follows:

(i) Can several investors with a previous business or professional relationship pool their proposed investment in a newly organized investment entity and combine their amount invested for the purposes of meeting the $750,000 amount invested test set forth in Division Rule 164-2-1(D)?
(ii) Can several investors without a previous business or professional relationship pool their proposed investment in a newly organized investment entity and combine their amount invested for the purposes of meeting the $750,000 amount invested test set forth in Division Rule 164-2-1(D)?

(iii) Can the Fund or the General Partner introduce prospective investors without any previous business or professional relationship and assist them in organizing an entity through which they can pool their investment for the purposes of meeting the $750,000 amount invested test set forth in Division Rule 164-2-1(D)?

II. Disclosure of Fees

All potential Fund investors will be provided with detailed disclosure about both the amount, purpose, and payment terms of both the management fee and the performance fee prior to making any commitment to invest.

III. Selling Investments in the Fund

The Fund will be offered and sold by the General Partner only to accredited investors, as defined in Division Rule 164-14-25s(B)(1) and SEC Rule 501(a), in reliance on the limited preemption from securities registration and or qualification requirements (other than notice filings and fee provisions) of applicable state securities laws under the National Securities Markets Improvement Act of 1996.

We appreciate your consideration of this request and would like to continue telephone contact as we work our way through these compliance and structuring issues. We would appreciate ongoing informal conversations with the Division before any formal interpretive or no-action guidance is provided, so that our clients may consider any structural modifications that may be warranted before proceeding.

Sincerely,

KRUSE LANDA MAYCOCK & RICKS, LLC

James R. Kruse

Theodore M. Grannatt

JRK/TMG/vs

Enclosure

cc: Foresee Strategies Fund, L.P.

Example of Fund Fees Charged Over Years

Fees Generally

See request for interpretive and "no-action" guidance for complete detail regarding these fees.

Management Fee	1.5%
Performance Based Fee	20%

Inception

Investor X invests $1.0 million into the Fund on 1/1/04. Total investment from all investors into Fund, the Fund's total asset value, on that date is $10.0 million.

Date	Current Fund Value	Market Effect	Performance Based Fee	Management Fee	Total Annual Payment
1/1/04	$10.0 million	$0.0	N/A	N/A	$0.0

Year 1

For the fiscal year ending 12/31/04, the Fund realizes a loss of $1.0 million. Total asset value has fallen from $10.0 million to $9.0. The management fee for 2004 is 1.5% of $9.5 million, assuming that this is the average asset value over the course of the year (beginning value was $10.0 million, the ending value was $9.0 million—therefore $9.5 million average). The fee is payable quarterly in advance at an average of $35,625 per quarter. There was no performance based fee for 2004 as there were no profits.

Date	Current Fund Value	Market Effect	Performance Based Fee	Management Fee	Total Annual Payment
12/31/04	$9,000,000	-$1,000,000	N/A	1.5%	$142,500

Year 2

In the fiscal year ending 12/31/05, the Fund realizes an investment profit of $500,000. Total asset value has grown from $9.0 million to $9.5 million. The management fee is 1.5% of the average asset value for the period, $9.25 million, therefore the fee is payable quarterly in advance at an average of $34,687.50 per quarter. There continued to be no performance based fee because the 2005 profits did not outweigh the 2004 losses including the management fees.

Date	Current Fund Value	Market Effect	Performance Based Fee	Management Fee	Total Annual Payment
12/31/05	$9,500,000	+$500,000	N/A	1.5%	$138,750

Year 3

In the fiscal year ending 12/31/06, the Fund realizes an investment profit of $5.5 million. Total asset value has grown from $9.5 million to $15.0 million. The management fee is 1.5% of the average asset value for the period, $12.25 million, therefore that fee is payable quarterly in advance at an average of $45,937.50 per quarter for an annual management fee aggregate of $183,750. There is a performance fee in this scenario because the 2006 profits outweigh the sum of the previous losses including the management fees. There is a $5.0 million gross profit minus the management fees of $142,500, $138,750 and $183,750. The performance based fee is 20% of the remaining $4,535,000. Therefore, the total fee burden for fiscal year end 2006 is $907,000 + $183,750 = $1,090,750.

Date	Current Fund Value	Market Effect	Performance Based Fee	Management Fee	Total Annual Payment
12/31/06	$15,000,000	+$5,500,000	20%	1.5%	$1,090,750

KRUSE LANDA MAYCOCK & RICKS, LLC
EIGHTH FLOOR, BANK ONE TOWER
50 WEST BROADWAY (300 SOUTH)
SALT LAKE CITY, UTAH 84101-2034

ATTORNEYS AT LAW
www.klmrlaw.com

TELEPHONE: (801) 531-7090
TELECOPY: (801) 531-7091

VIA FACSIMILIE TRANSMISSION

December 5, 2003

Mr. Anthony Taggart, Director
Utah Division of Securities
160 East 300 South
Salt Lake City, Utah 84114

Re: Foresee Strategies Fund, L.P. and Foresee Management, L.L.C. and Investment Company status

Dear Mr. Taggart:

The Fund was organized under the laws of the state of Utah in June 2003. Although the Fund is not an investment company subject to registration under the provisions of the Investment Company Act of 1940, we believe it will engage in investment activities that might qualify it, if not exempt from the Investment Company Act, as an "open-end non-diversified[1] management company" as defined in the Investment Company Act.

The Fund intends to rely on the provisions of Section 3(c)(1) of the Investment Company Act of 1940 to avoid requirements that it register as an "investment company" and as such, be exempt from much of the compliance with the substantive provisions of the Investment Company Act. To comply with Section 3(c)(1), the General Partner is contractually bound to restrict the number of Partners to 100 or fewer and to offer the Partnership Interests only through nonpublic transactions in order to maintain the Fund's exemption from "investment company" status under the Investment Company Act.

If you have any further questions or comments regarding this matter please contact us as soon as you are able.

Sincerely,

James R. Kruse

Theodore M. Grannatt

Cc: Jeffrey Collings

[1]The Investment Company Act defines a "diversified company" as "a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer."