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## State Securities Board

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JOSE ADAN TERVINO  
MEMBER

May 30, 1997

Mr. Charles E. Munson  
Selman & Munson  
Tenth Floor  
1000 Franklin Plaza  
111 Congress Avenue  
Austin, Texas 78701

Re: The Arc of Texas Master Pooled Trust

Dear Mr. Munson:

This is in response to your letter dated March 7, 1997, and received by this Agency on March 11, 1997.

Your letter and supplemental materials describe The Arc of Texas, Inc., a Texas nonprofit corporation (the "Arc"), and the establishment of a trust known as The Arc of Texas Master Pooled Trust (the "Trust"). According to your submissions, Arc will act as manager of the Trust and the trustee of the Trust will be Founders Trust Company ("Founders"), a state-chartered institution regulated and examined by the Texas Department of Banking.

The Trust will allow family members of disabled citizens to establish a trust sub-account for the purpose of supplementing the special needs of the disabled individual, while ensuring continued eligibility for federal benefits by complying with the Omnibus Budget Reconciliation Act of 1993 ("OBRA"). You have stated that OBRA provides that certain trusts may be established and managed by nonprofit corporations for the purpose of establishing pooled funds ultimately for the benefit of persons with disabilities. In effect, you have stated, the Trust is a vehicle by which donors can establish a moderate trust to provide some security and an enhanced quality of life for the pertinent beneficiary after the death of the donor. The Trust allows for a primary representative having the ability to provide specific direction in the types of materials that will be provided through the use of the Trust funds to carry out the ultimate wishes of the donors: that the beneficiary be cared for, in compliance with state and federal benefit regulations, consistent with a quality of life the disabled person had enjoyed before implementation of the Trust. Because of the pooling aspect of the Trust, you have asserted that professional management of the funds can be obtained at a modest cost to the participants which is less than would otherwise be incurred if individual trusts were established.

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As manager of the Trust, Arc will make timely and appropriate responses to requests for distributions from the primary representative on behalf of the beneficiary with disabilities; ensure that the distribution will not adversely affect the beneficiary's government benefits and that all required reports to government agencies are made; set up accounting and billing procedures for accurate record keeping and payment of fees; distribute financial reports to any funded account; and provide an annual written report and financial statement (disbursements, fees paid, and investment income), annual projections of suggested spending, and tax information. When a beneficiary with disabilities dies, the remaining trust assets will be distributed pursuant to and in compliance with OBRA and the wishes of the family as designated in the joinder agreement by which the Trust sub-account was established.

Your letter describes the duties of Founders in regard to the Trust, as follows: (1) collect funds for the benefit of qualified individuals; (2) invest the funds in a prudent manner; (3) maintain record keeping for each individual; (4) make necessary distributions as required; (5) provide an annual statement; and (6) prepare a trust return with the IRS. By virtue of these proposed activities, it appears that Founders would be acting as an investment adviser in Texas and subject to registration requirements of the State Securities Board. Please be advised that prior to conducting these services for the Trust, it will be necessary for Founders to be registered with this Agency.

Based upon the foregoing understanding, the staff of the State Securities Board will not recommend any action to require registration of the Trust. In addition, the staff will recommend no action to require the Arc or its agents to register as a dealer in connection with the marketing of the Trust to families of disabled persons in Texas.

Please note that this Agency has not made an independent investigation of the facts, but has relied solely upon the information you have provided. If this information is incorrect or changes substantially, the staff would reconsider the matter and the no-action position stated above would be void.

I trust this answers your inquiry. Please feel free to write us if you need further information.

Very truly yours,

DENISE VOIGT CRAWFORD  
Securities Commissioner

/dw

David Weaver  
General Counsel

cc: Mr. Pat H. Robertson  
Founders Trust