JONES DAY

222 EAST 41ST STREET • NEW YORK, NEW YORK 10017

TELEPHONE: (212) 326-3939 • FACSIMILE: (212) 755-7306

Direct Number: (212) 326-3417
dmmahle@jonesday.com

JP638749 November 11, 2010
522682-005001

VIA E-MAIL TO: RULE-COMMENTS@SEC.GOV

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-25-10

Dear Ms. Murphy:

On behalf of Parkland Management Company, L.L.C. ("Parkland"), we submit the following comments with respect to the new rule[1] (the "Proposal") proposed by the Securities and Exchange Commission (the "SEC"), based on requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"),[2] to define "family offices" that would be excluded from the definition of an "investment adviser" under the Investment Advisers Act of 1940[3] ("Advisers Act") and thus would not be subject to regulation under the Advisers Act. Parkland is a family office, organized in and operating since 1987, that received an exemptive order under Section 202(a)(11)(F) of the Advisers Act from the SEC in 2005.[4]

The Proposal generally requires a "family office" to have no clients other than "family clients," which includes "family members," with an exemption for certain former family clients.

1. Family Members

The Proposal defines "family member" to include: (1) the founders, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents; (2) the parents of the founders; and (3) the siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren) and such lineal descendants' spouses or spousal equivalents.[5] This definition is unnecessarily restrictive and, in conjunction with the repeal of the fifteen-client exemption for

[1] Family Offices, Investment Advisers Act Release No. 3098, 75 Fed. Reg. 63,753 (proposed Oct. 18, 2010) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1).

[2] Pub. L. No. 111-203, § 409, 124 Stat. 1376, 1575-76 (2010).

[3] 15 U.S.C. §§ 80b-1 to -21 (2010).

[4] *See* Parkland Mgmt. Co., Investment Advisers Act Release Nos. 2362 (Feb. 24, 2005) (notice) and 2369 (Mar. 22, 2005) (order).

[5] Proposal § 202(a)(11)(G)-1(d)(3), 75 Fed. Reg. at 63,763.

private advisers under Section 203(b)(3) of the Advisers Act (the "Private Adviser Exemption"),[6] is likely to cause numerous family offices that are not intended to be regulated by the Advisers Act to either apply for exemptive orders or register with the SEC. In addition, this definition does not comport with modern family structures or the SEC's past exemptive policy, which acknowledges a more realistic range of family arrangements by permitting persons outside of the Proposal's restrictive definition to be clients of family offices.[7]

A more practical definition would be to allow minor exceptions to this definition for persons who would typically be considered a family member or who have historically been considered to be family members by the particular family, such as extended family, distant relatives, and close family friends. Thus, we request the SEC to adopt a safe harbor for a limited number (*e.g.*, fifteen) of or a limited share of assets under management for persons who do not meet the Proposal's definition to cover certain special or unique family situations that are not intended to be regulated by the Advisers Act. The SEC has adopted,[8] and the Dodd-Frank Act requires,[9] similar *de minimis* exceptions in other contexts. We believe that such an exception is also appropriate and cost-efficient in this context.

2. Family Clients

The Proposal defines "family clients" to include: (1) any charitable foundation, charitable organization, or charitable trust established and funded exclusively by family members or former family members; (2) any trust or estate existing for the sole benefit of family clients; and (3) any limited liability company, partnership, corporation, or other entity wholly owned and

[6] Many family offices relied on the Private Adviser Exemption, which generally exempted any investment adviser that (1) did not hold itself out to the public as an investment adviser, (2) had fewer than fifteen clients during the preceding twelve-month period, and (3) was not an adviser to a registered investment company, from registration under the Advisers Act. Title IV of the Dodd-Frank Act eliminates the Private Adviser Exemption. Dodd-Frank Act §§ 401-416 (Private Fund Investment Advisers Registration Act of 2010).

[7] *See, e.g.*, Longview Mgmt. Group LLC, Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) (notice) and 2013 (Feb. 7, 2002) (order) ("Longview") (permitting the family office to advise "extended" members of the family and current and former employees of family entities); Roosevelt & Son, Investment Advisers Act Release No. 54 (Aug. 31, 1949) (permitting the family office to manage and advise certain 'nonfamily' accounts "for such reasons as friendship with the Roosevelt family or former partnership or employment in [the family office]").

[8] One example is Rule 2a-7 under the Investment Company Act of 1940, which allows registered money market funds to invest up to three percent of their total assets in lower-quality or second-tier securities and up to five percent of their total assets in illiquid securities. 17 C.F.R. § 270.2a-7(c)(3)(ii) and (c)(5)(i) (as amended by Money Market Fund Reform, Investment Company Act Release No. 29132, 75 Fed. Reg. 10,060 (Feb. 23, 2010)). Another example is Rule 505 of Regulation D under the Securities Act of 1933, which exempts from registration issuers offering and selling securities to no more than 35 non-accredited persons who do not satisfy the sophistication or wealth standards associated with other exemptions. 17 C.F.R. § 230.505(b)(2)(ii) (2010).

[9] *See, e.g.*, Dodd-Frank Act § 72l(a)(2l) (requiring the SEC to promulgate a "de minimis" exception to the definition of a "Swap Dealer" for entities that engage in a de minimis quantity of swap dealing in connection with transactions with or on behalf of its customers).

controlled (directly or indirectly) exclusively by, and operated for the sole benefit of family clients.[10] This definition is also unnecessarily restrictive. Section 409 of the Dodd-Frank Act instructs the SEC to adopt a definition for "family office" that recognizes "the range of organizational, management, and employment structures and arrangements employed by family offices."[11] However, the Proposal's definition ignores numerous and common "structures and arrangements employed by family offices" that (1) incidentally or minimally benefit non-family clients, such as relatives or charities, or (2) have insignificant ownership interests held by employees or outlying family members. For example, family trusts occasionally (*e.g.*, upon the death of a named family member) give trust assets to charities that may not be established or funded exclusively by family members or wholly owned and controlled exclusively by and operated for the sole benefit of family members.[12] Adopting the Proposal's restrictive definition would, therefore, prevent family offices from continuing to advise or manage the assets of such trusts and may prevent family members, who wish to avoid this result, from contributing trust assets to charitable entities that benefit the public. We do not believe that these outcomes would be in the public interest.

Accordingly, we encourage the SEC to adopt a somewhat broader definition of "family clients": (1) to include entities that incidentally or minimally benefit non-family clients or to provide an exception (whether based on a limited number of non-family clients, a limited amount of assets under management for non-family clients, or otherwise) for such entities; and (2) to include entities that are "wholly owned *or* controlled (directly or indirectly) exclusively by, and operated for the sole benefit of family clients." Such a definition of "family clients" would be more consistent with the requirements of the Dodd-Frank Act,[13] the SEC's past exemptive policy,[14] and the public interest.

---

[10] Proposal § 202(a)(11)(G)-1(d)(2)(iii) to -1(d)(2)(v), 75 Fed. Reg. at 63,762.

[11] Dodd-Frank Act § 409(b).

[12] *See, e.g.*, WLD Enters., Inc., Investment Advisers Act Release Nos. 2804 (Oct. 17, 2008) (notice) and 2807 (Nov. 14, 2008) (order) (permitting the family office to advise entities owned or funded exclusively by family members, and operated exclusively for the benefit of the family members and/or charitable organizations); Woodcock Financial Management Company, LLC, Investment Advisers Act Release Nos. 2772 (Aug. 26, 2008) (notice) and 2787 (Sept. 24, 2008) (order) (permitting the family office to advise entities operated exclusively for the benefit of family members or charitable organizations); Longview, *supra* note 7 (permitting the family office to provide portfolio management services to (1) a charitable entity created by family members but under the control of an independent board of directors, which includes family members, and (2) a charitable entity that is managed by the family office and was formed and funded by friends of a family member after his death); 5600, Inc., Investment Company Act Release Nos. 16004 (Sept. 25, 1987) (notice) and 16067 (Oct. 21, 1987) (order) (permitting the family office to advise charities or educational institutions that are controlled by family members or in which family members have a significant interest). *See also* Proposal, 75 Fed. Reg. at 63,756.

[13] *See supra* note 11 and accompanying text.

[14] *See, e.g.*, Slick Enters., Inc., Investment Advisers Act Release Nos. 2736 (May 22, 2008) (notice) and 2745 (June 20, 2008) (order) (permitting the family office to advise entities created by family members to invest in or to operate other businesses or real estate, which are not wholly owned by family clients); Adler Mgmt., L.L.C., Investment Advisers Act Release Nos. 2500 (Mar. 21, 2006) (notice) and 2508 (Apr. 14, 2006) (order) (permitting a

3. Public Policy and Grandfathering Provisions

The above recommendations provide for minor modifications to the Proposal's definitions of "family member" and "family clients" that are both sensible and wholly consistent with the intent of the Advisers Act. Each recommendation would reduce the number of currently operating family offices, like Parkland, from registering or filing exemptive order applications with the SEC, because the recommended definitions allow for a more diverse array of family offices that are closer to reality and customary practice. The recommendations also do not pose a systemic risk, a threat to the general public, or other regulatory concerns, because such small adaptations to the Proposal's definitions of "family member" and "family clients" could not allow family offices to rise to the level of activity commensurate with typical, commercial investment advisers. Moreover, there is no public policy purpose for not including these minor changes.

By contrast, requiring the registration of family offices that are currently exempt but do not meet the Proposal's restrictive definition of a family office would not only intrude on the privacy of affected families, but also would not support or advance the purposes of the Adviser Act to protect the public interest and the interest of investors.[15] Congress attempted to advance these purposes by repealing the Private Adviser Exemption to require advisers to private funds, such as hedge funds (not family offices), to register under the Advisers Act.[16] For these reasons the Proposal, in accordance with the requirements of the Dodd-Frank Act,[17] appropriately grandfathers family offices that provide and was engaged to provide investment advice to certain clients before January 1, 2010.[18] We believe that family offices (by their nature) are sui generis

(continued…)

"long-standing loyal family employee" to hold a beneficial interest in an entity advised by the family office); Riverton Mgmt., Inc., Investment Advisers Act Release Nos. 2459 (Dec. 9, 2005) and 2471 (Jan. 6, 2006) (order) (permitting the family office to advise trusts benefiting primarily, but not exclusively, family members); Pitcairn Co., Investment Advisers Act Release No. 52 (Mar. 2, 1949) (permitting four churches to hold minority equity interests in the family office); Donner Estates, Inc., Investment Advisers Act Release No. 21 (Nov. 3, 1941) (permitting a former employee of a family member to be the sole beneficiary of an entity advised by the family office). *See also supra* notes 8-9, 12 and accompanying text.

[15] *See* S. REP. NO. 111-176, at 75 (2010) (Conf. Report.) ("Senate Report"). Congress has said that "family offices are not investment advisers intended to be subject to registration under the Advisers Act" and that "the Advisers Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved." *Id*.

[16] *See* Senate Report at 38-39.

[17] Dodd-Frank Act § 409(b)(3).

[18] *See* Proposal § 202(a)(11)(G)-1(c), 75 Fed. Reg. at 63,762. The family office must have been providing investment advice to such clients before January 1, 2010 and the clients must be:

and agree with the SEC that they do not compete with one another, so it is not necessary or in the public interest to level the playing field.[19] All family offices currently operating under past exemptive orders should be able to continue to rely on those orders, particularly if their circumstances divert only slightly from the conditions of the Proposal. No public purpose would be served by requiring any of the family offices that have obtained exemptive orders, including the earlier ones, to become registered advisers by rescinding those orders merely because they do not meet the Proposal's restrictive definitions.

We appreciate the opportunity to provide comments on the Proposal. If you wish to discuss our comments, please contact David Mahle via telephone at 212-326-3417.

Very truly yours,

David M. Mahle

cc: Sarah ten Siethoff, Senior Special Counsel

(continued…)

- natural persons who (1) at the time of their investment, are officers, directors, or employees of the family office, (2) had invested with the family office before January 1, 2010, and (3) are accredited investors under Regulation D of the Securities Act of 1933;
- companies owned exclusively and controlled by members of the family of the family office; or
- investment advisers registered under the Advisers Act that in turn provide investment advice and identify investment opportunities to the family office and invest in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5% of the value of the total assets as to which the family office provides investment advice.

[19] *See* Proposal, 75 Fed. Reg. at 63,759-60.