

Elizabeth M. Murphy, Esq.
Secretary Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Dear Ms. Murphy:

Thank you for the opportunity to comment. In general, we support the views of the Private Investor Coalition, Inc., of which we are NOT a part, and wish to reiterate the following points of particular concern:

We believe that the Commission in drafting the Proposed Rule used words generally associated with traditional corporations, but did not intend thereby to exclude members and officers of a Limited Liability Company ("LLC"), for example. The Commission could clarify this point to include LLCs, as well as any person routinely performing functions corresponding to any of the enumerated categories with respect to any organization (whether incorporated or not). Cf. Rule 3b-2 under the Securities Exchange Act of 1934.

We urge the Commission to determine that, to be a single family office, the founder must be a lineal descendant of some common ancestor who was the economic power behind the generation of the family's wealth. In that context, we suggest that it would be the better drafting policy to delete the definition of "founder" in subparagraph (d)(5) of the Proposed Rule because of the daunting complexity of drafting a comprehensive definition that would suit the diverse needs of so many single family offices. Instead, we believe that the Commission should leave the term undefined so as to give the families involved flexibility in determining who, for purposes of that single family office, is deemed to be the founder, and thus from whom the family tree described in the defined term "family member" will grow and be populated for purposes of the final Rule.

In general, the proposed definition of "family client" is not inconsistent with the types of persons who are usually served by single family offices. We note that the term "family member" appears to assume that the member of the family on whom the definition would be based is an older person, while at page 12 of the Release the Commission acknowledges that the founder of a single family office could be a much younger person. For that reason, we believe the term "family member" should also include the individual, his parents, his grandparents, and the siblings of each such person, i.e., his aunts and uncles and great aunts and uncles, and their spouses and children. They are members of the same "family," and it is not at all unusual for a single family office to include such individuals within the single family office.

We unequivocally support the inclusion of adopted children, step children, and spousal equivalents. In this day and age, it is the rare single family office in which some member of the family does not have adopted children, step children, and/or spousal equivalents. If the member of the family wishes to share his home and his assets with an adopted child, step child, or a spousal equivalent, we believe that the single family office should make the decision whether to include such a person as a client of the single family office without being subject to regulation under the Advisers Act. For the same reason, we would support the inclusion of siblings of the founder and spouses and descendants of the siblings in the definition of "family client." We

assume that it was the intention of the Commission to include siblings, adopted children, step children, and spousal equivalents of each other person in the family tree that is created with the definition of “family member.” Finally, it would be inappropriate for the Commission to place any conditions on the inclusion of adopted children, step children, or spousal equivalents in the definition of “family member.”

We support the Commission’s proposal to allow former members of the family to retain any investments made through the single family office, but oppose the restriction on making any “new” investments through the single family office. Applied literally, the spouse of the founder, and thus the father or mother of at least some of the lineal descendants of the founder, who has been divorced from his spouse would be frozen out of the single family office by the Proposed Rule even if the former spouse is expected to continue to play an important role in the lives of his children and/or grandchildren. The Commission seems to have assumed that a former spouse would automatically cease to have any financial relationship with the single family office. In our experience, that assumption is not well-founded, and in any event the business and family affairs of the single family office may require the former spouse to be an active participant. As was true with the status of adopted children, step children, and spousal equivalents, if the members of the family wish to share their resources assets with a former spouse, we believe that the single family office should make the decision whether to include such a person as a client of the single family office without being subject to registration under the Advisers Act.

Finally, the term “former family members” is unclear. It could be argued that a widower (or widows) is still the spouse of the deceased individual, and thus is not a “former family member.” It could also be argued that the term “former family member” includes widowers even though the widower continues to live in the former residence of the couple when they were married and continues to have a place of honor at the family dinner table at important or even daily events. Either way, we request that the Commission please clarify that a widower is in fact still considered to be a “family member” for purposes of the Proposed Rule.

On the subject of charities as clients of the family office, we urge the Commission to adopt, instead, the language submitted by the Private Investor Coalition prior to the issuance of the Release which will address all existing arrangements of which we are aware:

foundations, charitable trusts, charitable funds, and other charitable or non-profit organizations established or controlled, directly or indirectly, by persons one or more of whom are a family client.

On the requirement that pooled investment vehicles be wholly owned and controlled, we recommend that the Commission amend the operative test in the Proposed Rule to make it disjunctive, “owned or controlled, directly or indirectly,” so that all proper and legitimate corporate structuring alternatives are available to a single family office when it is considering a potential investment. And the definition in paragraph (d)(2)(v) of the Proposed Rule must explicitly exclude from its scope any commercial private investment company, or other form of investment offered to the single family office by a third-party – such third-party investment vehicles not only do not receive investment advice from the single family office, but it is highly

unlikely that they would ever be offered or operated for the sole benefit of any single family office.

We also oppose the restriction that would require a key employee to be such for a twelve-month period before he or she could make an investment. The practical effect may be to deter prospective key employees from accepting offers of employment where interesting investments are expected to occur during the first twelve-months of his tenure. Exceptions should also be made for sophisticated outside directors and advisors to the family where the family office receives clear benefit from said directors and advisors and some form of constructive ownership in family investments or businesses is part of the compensation for these services.

We strongly urge that the commission commit to the term “family office” meaning any company formed by, primarily for the benefit of, or subject to the control of, the members of a single family.

If the Commission is totally committed to the “owned and controlled” drafting style, then we recommend that the phrase at issue be amended to read (i) owned, directly or indirectly, (ii) controlled, directly or indirectly, or (iii) operated primarily for the benefit of the family members.

Very Truly Yours,

Eugene Lipitz
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