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November 18, 2010

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

**Re: Proposed Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940
File Number S7-25-10**

Dear Ms. Murphy:

We represent The Private Investor Coalition, Inc. (“Coalition”), an entity all of whose members are single family offices. The Coalition is submitting this letter to supplement the views it previously expressed on November 11th regarding the nature and scope of the rule that the Commission must adopt to implement the authority granted to it in Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) to define the term “family office.” As you know, an entity that can comply with the rule will be excluded from the definition of “investment adviser” and not be subject to registration or regulation under the Investment Advisers Act of 1940 (“Advisers Act”). Because Section 403 of the Dodd-Frank Act repeals Section 203(b)(3) of the Advisers Act on July 21, 2011, the Coalition strongly supports the timely adoption of a rule under Section 202(a)(11)(G) of the Advisers Act that will exclude single family offices from the definition of “investment adviser.”

Introduction

The Coalition appreciates this opportunity to submit this marked-up version of Proposed Rule 202(a)(11)(G)-1 (“Proposed Rule”) that implements the comments that the Coalition previously made on November 11th. This letter is intended to explain the drafting suggestions that the Coalition is urging.

Commentary

General

As a general matter, we have attempted to make the Proposed Rule into a document that a lay person can administer without the need to consult a lawyer, so parenthetical thoughts have been moved into definitions or conditions of their own as much as possible, and paragraph (c) on grandfathering, which is confused and confusing and which is of limited (if any) applicability to the single office community at large, has been reduced to a cross-reference to its location in the Dodd-Frank Act.

Definition of Family Office

We have amended the definition of "family office" in several respects. First, we added a clause within the parenthetical behind the term "company" to make clear that a person could be a director and a trustee, for example, and it is the capacity in which they are acting that is important, not whether such a person is (or isn't) acting within the scope of his employment. Second, we have changed paragraph (b)(2) from "family members" to "family clients" because single family offices exist to serve all of the family clients, not just members of the family in their personal or individual capacity. Moreover, the mix of which family client (or type of family client) is receiving more or less of the single family office's services at any one point in time is likely to change and evolve with the addition of different generations of descendants and the needs of different family clients. For the reasons set forth in the Coalition's prior comment letter, we have adjusted the delimiting conditions in paragraph (b) (2) that precede the term "family clients" to more accurately reflect the manner in which single family offices have been structured and organized.

Definition of Family Client

We have amended paragraph (d)(2)(iii) to more accurately reflect the manner in which charitable foundations, etc., have been organized and structured. We have amended paragraph (d)(2)(iv) to more accurately reflect the manner in which trusts and estates have been organized and structured. We have amended paragraph (d)(2)(v) to more accurately reflect the manner in which LLCs, partnerships, etc., are used by single family offices to effectuate their investments, and have added a proviso to make clear that third-party investment vehicles are not considered to be a client of the family office to which the delimiting conditions in that provision would otherwise apply.

Definition of Former Family Member

We have moved the content of the definition of "former family member" to new paragraph (d)(4) for ease of reference and because it more naturally follows a definition of "family member" than precedes it, and we have expanded the reference to include children as well as spouses.

Description of Former Key Employee

We have amended the description of "former key employee" in two important respects. First, we have used the formal noun "termination" because it has a more fixed meaning in employment law, and we have adjusted the reference to which entity employed the former employee to more accurately reflect the possibility that the former employee could, as a technical matter, been an employee of the single family office itself, or an employee of a family client that is an investing entity described in paragraph (d)(3)(v) above.

Definition of Family Member

To avoid a complicated definition of "founder," the Coalition proposes the that family tree focus initially in paragraph (d)(3)(i) on the person who created or substantially contributed to the family's wealth, and in succeeding clauses (ii), (iii), and (iv) deal directly and separately with each direction that the family tree should go – *i.e.*, up (parents, grandparents, and their siblings), horizontal (siblings of the principal individual), and down (descendants of the principal individual and his spouse). This method of drafting permits the inclusion of step and adoptive children and spousal equivalents in every possible quadrant of the family tree chart that the Proposed Rule would now create, and is relatively easy for a lay person to apply.

Description of Involuntary Events

We have rewritten this paragraph to accord with the recommendations in the prior comment letter submitted by the Coalition, and have added a clause that addresses the situation where a family client is no longer eligible to be a family client.

Conclusion

The Coalition believes that, in general and taking into account the drafting recommendations reflected in the attached markup as well as those that it has previously made in its prior comment letter, the Proposed Rule would meet the needs of single family offices. The Coalition believes that it is in everyone's best interests to fashion a rule that can be applied by single family offices broadly and effectively, with little additional administrative oversight from the Commission. The Coalition stands ready to work with the Commission and its staff to achieve a final rule that fulfills the mandate from Congress in Section 409. Thank you again for this opportunity to express the Coalition's comments.

Elizabeth M. Murphy, Esq.
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Sincerely,

Martin E. Lybecker

TEXT OF PROPOSED RULE

§ 275.202(a)(11)(G)-1 Family offices.

(a) *Exclusion.* A family office shall not be considered to be an investment adviser for purposes of the Act.

(b) *Family office.* A family office is a company (including its directors, partners, trustees, and employees, in their respective capacities as such) that:

- (1) Has no clients other than family clients;
- (2) Is (i) owned, directly or indirectly, by, (ii) controlled, directly or indirectly, by, or (iii) operated primarily for the benefit of family clients; and
- (3) Does not hold itself out to the public as an investment adviser.

(c) *Grandfathering.* A family office, as defined in paragraph (b) above, may include any person who is described in paragraph (d)(3) of Section 409 of the Dodd-Frank Act.

(d) *Definitions.* For purposes of this section:

(1) *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of being an officer of such company.

(2) *Family client* means:

- (i) Any family member;
- (ii) Any key employee;
- (iii) Any charitable foundation, charitable organization, charitable trust, or other non-profit organization established or controlled, directly or indirectly, by persons

one or more of whom is a family client;

(iv) Any trust or estate funded exclusively by one or more family members or established primarily for the benefit of one or more family clients;

(v) Any limited liability company, partnership, corporation, or other entity majority-owned or controlled, directly or indirectly, by, or operated primarily for the benefit of, one or more family clients; provided that if any such entity is an investment company, it must be excluded from the definition of "investment company" in the Investment Company Act of 1940; and further provided that any investment company as to which the family office is not giving investment advice shall not be considered to be a client of the family office for purposes of section 275.202(a)(11)(G)-1(d)(2).

(vi) Any former family member; or

(vii) Any former key employee, provided that, upon the termination of such individual's employment by the family office or family client, the former key employee shall not receive investment advice from the family office or family client (or invest additional assets with a family office-advised trust, charitable foundation, or entity) other than with respect to assets advised (directly or indirectly) by the family office or family client immediately prior to the termination of such individual's employment; provided, however, that a former key employee shall be permitted to receive investment advice from the family office with respect to additional investments that the former key employee was contractually obligated to make and that relate to a family-office advised investment existing, in each case, prior to the time the person became a former key employee. Solely for purposes of this clause (vii), the term "family office" shall include any company identified in clause (v) above.

(3) *Family member* means:

(i) any natural person whose economic activities created or substantially contributed to the family's wealth, and such person's spouse;

(ii) the parents and grandparents of the persons described in clause (i) above, the spouses of such parents and grandparents and the siblings of the persons described in this clause (ii) and such siblings' spouses, and the lineal descendants of all of the persons described in this clause (ii) and such persons' spouses;

(iii) the siblings of a person described in clause (i) above, and such siblings' spouses and their lineal descendants and such lineal descendants' spouses; and

(iv) the term "descendant" is intended to include natural children of a person as well as children by adoption and stepchildren, the term "spouse" is intended to include a spousal equivalent, and the terms "siblings," "parents," and "grandparents" are intended to include step-siblings, step-parents, and step-grandparents.

(4) *Former family member* means a spouse or a descendant who was a family member but is no longer a family member due to a divorce or other similar event.

(5) *Key employee* means any natural person (and his spouse and their lineal descendants) who is an executive officer, director, trustee, general partner, or person serving in a similar capacity of the family office or any employee of the family office (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the family office) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office. Solely for purposes of this subparagraph (d)(5), the term "family office" shall include any company identified in clause (d)(2)(v) above.

(6) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent

to that of a spouse.

(e) *Involuntary Events*. If (i) a person that is not a family client becomes a client of the family office as a result of the death of a family member or key employee or other involuntary transfer from a family member or key employee, or (ii) a family client ceases to be a family client as defined in paragraph (d)(2) above, that person shall be deemed to be a family client for purposes of section 275.202(a)(11)(G)-1(d)(2) until the first anniversary of such time as it is both legally and practically feasible for the family office to transfer the affected assets to such person, and in any event no earlier than one year from the date that it becomes legally feasible to transfer the affected assets unless it becomes practically feasible to affect such a transfer sooner.