MILLER & MARTIN PLLC
ATTORNEYS AT LAW

SUITE 1000 VOLUNTEER BUILDING
832 GEORGIA AVENUE
CHATTANOOGA, TENNESSEE 37402-2289
(423) 756-6600
FAX (423) 785-8480

W. Scott McGinness, Jr.
Direct Dial (423) 785-8284
Direct Fax (423) 321-1546
smcginness@millermartin.com

November 18, 2010

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

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 several single family offices (the "Group") and are submitting this letter on their behalf. The purpose of this letter is to provide comment to the Securities and Exchange Commission (the "Commission") on Proposed Rule 202(a)(11)(G)-1 (the "Proposed Rule"). As you are aware, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), Section 203(b)(3) of the Investment Advisers Act of 1940 (the "Advisers Act") will be repealed effective July 21, 2011. Section 203(b)(3) provides for exemption from the registration requirements under the Advisers Act for advisers, including family offices, that, among other things, have had fewer than 15 clients during the previous twelve-month period. Section 409 of the Dodd-Frank Act excludes "family offices" from registration under the Adviser Act, but leaves to the Commission the task of defining the term "family office." The Proposed Rule is the Commission's initial proposal with regard to such definition. Because Section 203(b)(3) currently provides family offices with an exemption from registration under the Advisers Act and it will be repealed effective July 21, 2011, the Group urges the Commission to adopt a rule under Section 202(a)(11)(G) of the Advisers Act well in advance of July 21, 2011 to allow single family offices currently in existence the ability to comply with the new rule prior to its effective date.

We respectfully submit to the Commission for consideration and ultimate adoption the following additional comments relating to specific provisions of the Proposed Rule.

Comments

1. Family Client Definition

Under the Proposed Rule, "family clients," as defined, are permissible advisees of a family office which is exempt from registration. We propose several modifications to the scope of the family client definition as follows:

a. Employee Benefit Plans

Employee benefit plans and other employee compensation plans sponsored by the family office should be classified as "family clients." It is not the intent of the Dodd-Frank Act or the Advisers Act to prevent a family office from providing such plans to attract and retain employees.[1] In fact, the Dodd-Frank Act instructed the Commission in defining excluded family offices to "recognize the range of organizational, management and employment structures and arrangements employed by family offices."[2] In addition, the Senate Banking Committee instructed that activities designed to align the interests with employees to those of the family office should not automatically exclude a family office from the definition. Therefore, it is clear that the Dodd-Frank Act and the Senate Banking Committee contemplated family offices utilizing employee benefit plans and providing advice to such plans without registering under the Advisers Act or obtaining an exemptive order.

The Group urges the Commission to adopt a final rule that acknowledges benefit plans sponsored by a family office are included in the definition of "family client" for purposes of the Advisers Act. Otherwise, because this practice is so widely conducted by family offices and the burdens of registering under the Advisers Act are significant, the Commission will likely experience a substantially increased burden via requests for exemptive orders.

b. Self-directed Accounts and IRAs

Self-directed benefit plan accounts (should the Proposed Rule not be amended to treat all family office sponsored employee benefit plans as family clients) and IRAs of key employees should be considered "family clients" for purposes of the Advisers Act. While there may be a legal distinction between a key employee and his self-directed account or IRA, there should be no such distinction under the Advisers Act. This is because the key employee, who is generally the beneficiary of such accounts, receives investment advice from the family office and directs and solely controls the investment of the accounts. Accordingly, he may choose to invest such accounts in accordance with the investment advice provided to him by the family office; however, the ultimate decision to invest lies with him. It stands to reason that because the key employee is deemed a family client and such key employee receives the investment advice from the family office, a key employee's self-directed employee benefit plan account and IRA should be classified as a family client. Indeed, there are numerous instances, such as the determination of whether a self-directed account or IRA is an accredited investor or qualified purchaser, where the account is deemed to be the alter ego of the account owner. Based on the above reasons and the requirement under the Dodd-Frank Act that the Commission consider current employment structures, the Group urges the Commission to provide verification that self-directed accounts and IRAs of key employees are in fact "family clients."

c. *Charitable Foundations, Charitable Organizations and Charitable Trusts – Section (d)(2)(iii)*

The Group agrees with the Commission's position that charitable foundations, charitable organizations and charitable trusts (each a "CFOT" and collectively, "CFOTs") should qualify as family clients under the Advisers Act; however, the Group believes that the limitations imposed on qualifying CFOTs in the Proposed Rule are too restrictive. Under the Proposed Rule, a family member or former family member must establish and fund exclusively a CFOT in order for such CFOT to qualify as a family client. This approach not only jeopardizes years of past practice by family offices and their related

---

[1] For purposes of this letter, prohibitive assertions relating to the activities of family offices address only a family office's ability to conduct such activities without registering under the Advisers Act or obtaining a exemptive order from the Commission. The Group understands that either registering or obtaining an exemptive order would authorize the family office lawfully to conduct such activity.

[2] Section 409(b)(2) of the Dodd-Frank Act.

charitable entities, but it also inhibits the ability of a family office to serve to the fullest extent the public interest through CFOTs. This will occur because, under the Proposed Rule, family offices will be required to refuse legitimate donations from non-family members intended to aid in the charitable mission of the CFOT.

In addition, the Proposed Rule's requirement that the CFOT be established and funded by "one or more family members or former family members" should be modified. Similar to Section (d)(2)(v) of the Proposed Rule, Section (d)(2)(iii) of the Proposed Rule should be expanded to include not only family members and former family members, but other definitional constituents of a family client as well. As the Proposed Rule is currently drafted, a key employee could not participate with a family member in forming a CFOT. Nor could a CFOT created by a key employee be advised by the family office. As a method of aligning the interests of key employees with those of the family members, the Senate Banking Committee acknowledged the importance of allowing key employees to co-invest with family members. This coupled with the public policy benefit of incentivizing family offices to establish and fund CFOTs strongly favors the expansion of the Section (d)(2)(iii) of the Proposed Rule to comport with Section (d)(2)(v).

In an effort to incorporate the above comments, the Group proposes the following Section (d)(2)(iii) in lieu of the language contained in the Proposed Rule:

> Any charitable foundation, charitable organization, charitable trust, in each case established and funded or controlled exclusively by one or more family members, former family members or family clients;

In the event the Commission determines the proposed language is not acceptable due to the addition of the control concept, the Group proposes, in the alternative, that the Commission consider adopting a *de minimis* threshold rather than the exclusivity requirement as set forth in the Proposed Rule. The Group proposes a *de minimis* threshold of 10%, which would require the CFOT to be 90% or more funded by a family member, former family member or family client.

d. Trusts or Estates – Section (d)(2)(iv)

The Group agrees with the Commission's position that trusts existing for the sole benefit of one or more family clients should be deemed a family client. In addition to trusts *existing* for the benefit of a family client, the Group believes that trusts or estates *established* for the benefit of a family client should also be deemed a family client. Due to the breadth and variety of trusts, it is quite possible that a trust could be established for the benefit of a family client today and later provide an ancillary benefit to a non-family client. For example, a trust created today for the benefit of a stepchild of the founder and that stepchild's lineal descendents is clearly established and existing for the sole benefit of family clients. However, in the event the stepchild's mother and founder stepfather divorce, such stepchild's lineal descendents would not be deemed family clients. Therefore, while the trust was established for the sole benefit of family clients and existed for a period of time for the sole benefit of family clients, it would no longer exist for the sole benefit of family clients; therefore, it would not fall under the definition of a family client.

To incorporate these comments into the Proposed Rule, the Group urges the Commission to replace the language in Section (d)(2)(iv) with the following:

> Any trust or estate established or existing for the sole benefit of one or more family clients;

e. Limited Liability Companies, Partnerships, Corporations and Other Entities – Section (d)(2)(v)

The Group urges the Commission to revise the definition of family client requiring limited liability companies, partnerships, corporations or other entities to be wholly owned and controlled (directly or indirectly) exclusively by one or more family clients. Specifically, the conjunctive "and" between "owned" and "controlled" should be removed and the disjunctive "or" should be inserted. Also, the standard for control should be consistent with the definition under Section (d)(1) of the Proposed Rule rather than "exclusive." This would allow family offices to continue using certain investment structures and alternatives when making investments. For example, under this revised standard, a former spouse of a family member could invest after the divorce in an entity controlled by the family office and operated for the benefit of such former spouse's child, who is a family member. In contrast, under the Proposed Rule, such former spouse could not hold such interest in a custodial arrangement for the benefit of her child even though her child is a family member.

We also believe limited liability companies, partnerships, corporations and other entities should not be excluded from the definition of a family client simply because they are not operated for the sole benefit of one or more family clients. Specifically, the Group believes that the phrase "and operated for the *sole* benefit of" (emphasis added) set forth in Section (d)(2)(v) of the Proposed Rule should be modified to read "and operated for the *primary* benefit" (emphasis added). In the example referenced in the paragraph above, under the Proposed Rule, the former spouse could not receive any indirect or incidental benefit from the investment made for the benefit of her family member child, even if such benefit directly related to an expense arising from the obligation of a custodial parent.

To incorporate these comments into the Proposed Rule, the Group urges the Commission to replace the language in Section (d)(2)(v) with the following:

> Any limited liability company, partnership, corporation, or other entity wholly owned or controlled (directly or indirectly) exclusively by, and operated for the primary benefit of, one or more family clients; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of "investment company" under the Investment Company Act of 1940.

In the alternative, the Group believes that, in addition to relaxing the "sole benefit" restriction, non-family clients should, at a minimum, be able to participate in such investment vehicles, provided, that such non-family clients' ownership percentage does not exceed a *de minimis* threshold. Similar to the *de minimis* standard proffered above, the Group proposes the *de minimis* ownership threshold to be at 10%. By adopting this standard, the Commission will ensure that family offices have available typical structuring possibilities for investments.

To incorporate this alternative approach into the Proposed Rule, the language in Section (d)(2)(v) under the Proposed Rule should be replaced with the following:

> Any limited liability company, partnership, corporation, or other entity owned and controlled (directly or indirectly) exclusively by, and operated for the primary benefit of, one or more family clients; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of "investment company" under the Investment Company Act of 1940; provided, further, that, for purposes of this Section (d)(2)(v), non-family clients may hold no more than 10% of the outstanding units, interests, capital stock or other evidences of ownership of such limited liability company, partnership, corporation or other entity, as appropriate.

2. Key Employee Definition

The Group fully supports key employees being included in the definition of family clients. However, the twelve-month waiting period instituted under the definition of key employee should not be included in the final rule. It is clear that the final rule should favor allowing family offices to align the interests of key employees with the interests of family members. The twelve-month waiting period does not support this consideration. In fact, it further separates the interests of key employees and those of the family members. For example, assuming a family office allows a key employee to co-invest as part of his benefit package, under the Proposed Rule, the key employee would not be allowed to co-invest with the family office until the expiration of the twelve-month waiting period. This would create an incentive for the key employee to attempt to delay family office investments, potentially even attractive investments, for the duration of the waiting period as he would not benefit from investments made during such twelve-month period. The family members, on the other hand, would have a strong interest in making an attractive investment at any point.

3. Founders Definition

The Group urges the Commission to consider eliminating the defined term "founders" from the final rule for the following reasons. First, there is no universal structure for family offices as each office is created for unique purposes applicable to each particular family. This individualization of family offices is not conducive to applying a stringent approach with respect to the determination of the founder of a family office. For example, some family offices are created by a group of children, each of whom are lineal descendents of the creator of wealth, to manage the family wealth for the benefit of family members ranging from their grandparents to their children. Other family offices are created by key employees in an effort to efficiently and effectively provide services to family members. While these are only two of the many possible examples, in each case, the Proposed Rule does not achieve its intent. In the first example, the grandparents of the founders would not be considered family members. As for the second example, it is unclear who would qualify as the "natural person and his or her spouse or spousal equivalent for whose benefit the family office was established and any subsequent spouse of such individuals." Evident from these two examples, if the definition of founder as set forth in the Proposed Rule is contained in the final rule, the Commission is almost certain to experience a substantially increased burden of responding to requests for exemptive orders as a result of the application of this defined term to practical considerations relating to the creation of a family office.

Should the Commission elect not to delete the definition of "founders" as suggested above, the Group believes that the existing definition set forth in the Proposed Rule should be clarified so that it is clear that a "founder" can be one person. Perhaps the definition could be revised to read "the natural person and/or his or her spouse or spousal equivalent . . . ." We are aware of a family office which was established by the widow of the creator of the family wealth and her two children. Given the current wording of the definition, it is not clear that the widow would be a founder and thus a family member.

Conclusion

The Proposed Rule, taking into consideration the comments above, will sufficiently satisfy the needs of family offices and the mandate issued under the Dodd-Frank Act. The Group appreciates the opportunity to provide comment on the Proposed Rule, and is happy to answer any questions that the Commission may have or provide information the Commission may need.

Very truly yours,

MILLER & MARTIN PLLC

W Scott McG Jr

W. Scott McGinness, Jr.