Comments Regarding File No. S7-25-10

We request comment generally on our approach to the proposed rule and its implementation of section 409 of the Dodd-Frank Act. Are other approaches available that we should consider?

- Family offices are organized for a variety of reasons and in a variety of forms, most often in tandem with family operating companies, private investment companies and other pooled investment vehicles, family trusts, and estates. The individuals and entities served by the family office are normally the owners of the businesses and their heirs, who are also settlors and beneficiaries of the trusts. As a general rule, and to the extent practical, I suggest that any natural person or entity that is an owner or co-owner of a private business, a settlor of a trust, and beneficiary of a trust or estate, should qualify to be a "family member" and that their affairs may be managed by a "family office" and excluded from the Act. Doing so will ensure the individuals and entities connected to the family through ownership and trusts can be served through their own private office.

We request comment on our proposed inclusion of stepchildren within the meaning of the term "family members" for purposes of the "family office" definition. Should we include stepchildren? Are there any additional conditions that we should impose if stepchildren are included?

- Stepchildren should be included in the definition of "family member" since they can be beneficiaries of trusts and estates.

We request comment on our proposed definition of spousal equivalent.

- Spousal equivalent should be included in the definition of "family member" since they can be beneficiaries of trusts and estates.

We request comment on including parents of the founders as a "family member" under the proposed rule.

- Parents of founders should be included since they also can be named beneficiaries of trusts and estates.

We request comment on including siblings and their spouses and descendants in the definition of family client.

- Siblings and their spouses and descendents should be included in the definition of "family member" since they are also normally beneficiaries of trusts and estates.

More generally, we request comment on our definition of family member. Are we drawing the line too broadly or too narrowly regarding when the clientele of a family office starts to resemble that of a typical commercial investment adviser and not a single family? For example, certain legally created relationships such as certain types of guardianships may resemble the type of relationship that is included in the definition of family member depending on the facts and circumstances. Are there other types of family members that should be included? Why or why not? We note that family offices would still be able to seek a Commission exemptive order if they wanted to continue to advise family that did not meet our proposed definition of family member.

- As a general rule, and to the extent practical, I suggest that any natural person or entity named as a beneficiary of a trust or estate should qualify to be a "family member."

Should we permit multifamily offices to operate under this exclusion from the Advisers Act? If so, how would we distinguish between a multifamily commercial office and an office more closely resembling those operating under our exemptive orders (except providing advice to multiple families)?

- Multi-family offices are organized in a variety of forms. Some limit their clientele to the "family

members" of the families that own the organization. Others provide their services to clientele that are unrelated to the families that own the organization.

- In the case where clientele of the multifamily office are limited to "family members" of the families that own the organization, the office is typically organized in order to pool the resources of the family to provide financial and administrative services cost-efficiently by achieving economies of scale. It is very common for these offices to pool assets to enable access to certain types of investments and investment fee arrangements that would not be available to the families separately. In this case, the families have entered into a contract between them that provides a basis for resolving differences in the domain of state courts under corporate law. I suggest that multi-family offices that conform with this arrangement should be included in the exclusion.
- In the case where clientele of the multi-family office are unrelated to the families that own the organization, the office operates as a commercial investment advisor, and therefore should not be covered by the exclusion. The rationale for inviting non-family members to become clientele is typically to provide additional revenue to defray operating expenses, and often is expressly intended to generate a profit for the benefit of the owners. In such instances, the owners are "trading on their name", in other words, using their standing in the community to attract business that will benefit them economically.

We request comment on our proposed approach regarding involuntary transfers. Should we permit family clients to transfer assets advised by the family office to non-family clients if there is a death or other involuntary event without jeopardizing the ability of the family office to rely on the exclusion under proposed rule 202(a)(11)(G)-1? If so, under what conditions and to what types of transferees? How would we distinguish between a typical commercial adviser serving both related and unrelated clients from a family office resembling those operating under our prior exemptive orders? Should we allow a different period of time or transition mechanism to transfer assets that a non-family client receives in an involuntary transfer to another investment adviser?

- Exception should be given to situations in which the involuntary transfer from clients to non-family clients takes a form that continues to include other family clients. So, for example, if a trust is created under a will, and beneficiaries include family members and non-family members, the trust should be included as a "family member."
- Selection of an alternate advisor and transfer of assets can often take much longer than four months. I suggest that the rule allow 12 months for the transfer of assets.

We request comment on this approach. Should we exclude former family members? Are there other approaches to treating such persons that we should consider?

- Former family members who are no longer beneficiaries and have no other standing within the business affairs or estates of the family should be excluded.

We generally have included these types of companies and organizations when owned and controlled by family members to be treated as permitted clients of the family office under our exemptive orders. Including them should allow the family office to structure its activities through typical investment structures. We request comment on this aspect of our proposal.

- Yes, any charitable foundation, charitable organization, or charitable trust established and funded exclusively by one or more family members and any trust or estate should be included.
- However, the entities should NOT be limited to those that are solely for the benefit of one or more "family members." In so far as a trust or estate is formed for the benefit of family AND non-family members, the rule should not put family members at a disadvantage by excluding the trust or estate from the rule.

We request comment on our proposed treatment of investments by employees of the family office. Should we permit key employees to receive investment advice through the family office? Do family offices rely on allowing co-investment to attract talented investment professionals to work at the family office? Should the definition of key employee be based on the knowledgeable employee standard in rule 205-3 under the Advisers Act? Are there restrictions that we should consider imposing as a condition to such investment to help protect non-family members investing through the family office? Should we allow former key employees to retain their investments through the family office at the time of termination? Are any of our conditions too restrictive? For example, should we modify or eliminate the 12-month experience requirement for key employees? If so, how and why? Are there other types of individuals or entities that should be permitted to invest through the family office without jeopardizing that family office's exclusion under the Advisers Act?

- Family offices do rely on co-investment opportunities to attract investment professionals AND OTHER experienced professionals to work at the family office AND OTHER family businesses.
- The definition of key employee should not be limited to the knowledgeable employee standard in rule 205-3. The definition should encompass employees who may work for affiliated family entities in capacities that require other professional knowledge that is required of senior officers in those businesses. For example, senior officers of a family-owned operating business with professional skills relevant to the business should be allowed co-investment opportunities. This is desirable and of particular benefit to the family if doing so results in alignment of interests of the family and the employee.

We do not believe we could have taken such an approach in a rule of general applicability and we note that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that does not meet our proposed family client definition. However, we request comment on our approach. Are there other individuals or entities that should be included? Under our proposed rule, the family office could not provide investment advice to a person that may have a long employment relationship with the family but does not qualify as a "key employee." Are there other types of individuals that commonly have close ties to a family that should be included as a family client?

- Retired key employees often maintain close ties to a family and should be included in the definition of "family member." A common practice among family offices is to provide retired employees a consulting contract for advice or assistance during transition to new employees, and for other purposes. Family-owned offices should be allowed to offer retired key employees co-investment opportunities or to have access to investment services without jeopardizing the definition of a "family office."
- Independent financial and legal advisors that provide services to the family should be included in the definition of "family member." A common practice among family offices is to provide independent professionals that serve the family co-investment opportunities as a performance incentive and to align their interests with the family. Family-owned offices should be allowed to offer independent professionals that provide advice and counsel to the family under separate agreements to co-invest or to have access to investment services without jeopardizing the definition of a "family office."

We request comment on the condition that the family office be wholly owned and controlled by family members. Are there reasons that we should not require that the family office be wholly owned and controlled by family members? Should some minor ownership stake of non-family members be permitted? If we permitted non-family members to own a minor ownership stake in the family office, what other protections should we impose to ensure that the family office did not operate as a more typical commercial investment adviser? Are there other restrictions on ownership and control of the family office that we should impose consistent with our policy goals? Should we also require that the family office be operated without the intent of generating a profit or only charge fees designed to cover

its costs and the compensation of its employees?

- Ownership and control are two different things. A variety of corporate forms, ownership structures, and governance arrangements can be devised that maintain family control, yet allow for ownership stakes to be shared with non-family members. Sharing ownership may be desirable and of particular benefit to the family if doing so results in an alignment of interests of the family and the employees.
- The corporate form and economic structure of the family office, whether or not it is operated with the intent of generating a profit, is irrelevant to the proposed rule. Imposing a requirement on the intent of generating a profit would unnecessarily regulate the interactions of family members in managing their own wealth. Some family offices may adopt a corporate structure such as an S Corporation and an accounting process and charging mechanism that requires all "family members" to pay for services received at cost. Other family offices may be organized as C Corporations or partnerships, with or without stock, and decide that some "family members" may receive some services at no charge, while other family members pay a premium for their services to subsidize the other "family members." The family office may also desire to generate a profit to add to a capital reserve for unforeseen expenses or to use for a future capital project such as the implementation of a computer system or acquisition of an office building. Additionally, excess profits can be saved or returned to clients in the same fashion as a mutual insurance company or mutual bank.

Are there circumstances where a family office holding itself out to the general public as an investment adviser should nevertheless be excluded from the protections afforded to the investing public under the Advisers Act?

- The first two conditions to meet the definition of a family office – that they are limited to serving family clients; and, that they have family ownership and control – are sufficiently limiting to render the third condition redundant. I believe the third criteria unnecessarily regulates the operation of the family office in managing the family's wealth.
- The third condition – not holding itself out as an investment adviser – may be too ambiguous or limiting, and is likely unnecessary to define a "family office". Consider situations common in family offices in which the office may adopt a legal entity name indicative of an investment advisory business and establish a website and other publicly available material that describe their investment activities for the sole purpose of attracting investment opportunities for their family members. These organizations are not seeking to enter into typical advisory relationships with non-family clients; but, instead, these family offices are seeking to attract investment opportunities from other parties that otherwise would not be aware of their interests.

Biography of commenter

Stephen Tall is a senior operating executive and consultant with global experience in financial services businesses including private banking, investment management, and insurance. Most recently he lead a team in an attempt to form a client-owned private bank to serve family offices. From 2007 to 2008 he served as deputy head of Burnett Companies, a family office based in Texas. In 1999, he joined Fiduciary Trust Company International, a global private bank based in New York, where he served in several senior management positions. His responsibilities included chief administrative officer of the High Net Worth Division, chief technology officer of the company, disaster recovery officer, chief compliance officer, member management committee, officers' executive committee, risk management committee, and technology governance committee. Prior to Joining FTCI, Mr. Tall was an associate partner at Accenture where he led international financial services client engagements in technology and operations consulting and outsourcing.