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November 18, 2010

Elizabeth Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NW
Washington, DC 20549-1090

Family Offices, Proposed Rule (Release No. IA-3098)
Commission File No. S7-25-10

Dear Ms. Murphy:

I appreciate the opportunity to comment on the Commission's proposed regulation regarding the "family office" exclusion from the definition of "investment adviser" under the Investment Advisers Act of 1940, as amended, that is proposed to be codified in the new Rule 202(a)(11)(G)-1 (the "Proposed Rule"). The views expressed in this letter are informed by the perspectives of some of the firm's family office clients but remain the views of this writer.

Generally speaking, the Commission's somewhat expansive application of the existing body of exemptive orders and exemptive practice in formulating the new exception is welcomed. For example, it is constructive that the Proposed Rule would include within the definition of "family members" spousal equivalents, stepchildren, the parent of the person for whom the family office was established, and lineal descendants of the parents.

While the Commission will retain specific exemptive authority for family office arrangements that fall outside the specific provisions of Proposed Rule, I respectfully request that the Commission give further thought to the following additional incremental changes:

Definition of "family member." The definition of "family member" should be extended to include ancestors of the founder more remote than the parents of the founders (perhaps limited to grandparents and great grandparents of the founders) and their spouses and lineal descendants. Such an expansion would reflect the current realities of inter-generational wealth management, where family-generated wealth is often managed across multiple generations, yet circumscribe the universe of potential clients of the excepted family office to persons who maintained an appropriate family connection.

Definition of "lineal descendants." The definition of "lineal descendants" should also include not only biological descendants, adopted children and stepchildren, but also other legal relationships, such as foster children and minors subject to legal guardianship arrangements, where

the familial emotional and economic role is frequently indistinguishable from that of children and stepchildren.

Effect of "involuntary transfers." I believe that the provision in Proposed Rule 202(a)(11)(G)-1(b)(1) that would permit an exempt family office to have a non-family client for four months following an involuntary transfer should be further modified to include a concept that the holding period could be extended for up to two years if the family office determined in good faith that the disposition of the asset that had been involuntarily transferred would adversely affect the interests of the non-family client or other family member clients, such as would be the case if the disposition required to avoid investment adviser registration was of an asset for which there was no liquid trading market, if the transfer would trigger adverse tax consequences, or if the transfer would require a governmental or third party consent that could not be obtained without an unreasonable burden. By limiting the advisory relationship to an asset that had been involuntarily transferred, this would avoid triggering the burden of a registration or exemptive application to the Commission if, for example, the family office determined that it had a fiduciary or other legal obligation to continue to advise with respect to this asset.

The Commission has also requested comment on whether the exemption should be extended to cover family offices that serve multiple families. In particular, the Commission sought guidance on how the Proposed Rule "would distinguish between a multi-family commercial office and an office more closely resembling those operating under [its] exemptive order (except providing advice to multiple families)…" I believe that the requirement in the Proposed Rule that family office "does not hold itself out to the public as an investment adviser", when read in the context of the Commission's commentary in the proposing release and the existing body of interpretations of the "holding out" concept under the Investment Advisers Act, provides a broad structural protection that would deter a family office seeking to claim the exclusion from the definition investment adviser from seeking to enter into typical commercial advisory relationships with non-family clients. To the extent that the Commission believed that this restriction needed further reinforcement, the Commission could clarify in the adopting release the factors that it believed may be indicative of an impermissible holding out. Such factors might include, among others: actively soliciting non-family clients; having non-family clients that accounted for more than an immaterial threshold of assets under management; having compensation arrangements for non-family office relationships on terms that differed materially from family clients; and having non-family clients whose assets being advised did not bear a reasonable correlation to the assets of family members advised by the family office. This latter requirement would allow for situations where non-family members had co-invested with family members and there would be efficiencies in the management of these assets.

I also suggest that the Commission also pconsider broadening the Proposed Rule to provide a further exemption for multiple families to pool their assets within a multi-family office and share in the efficiencies and economies of scale that such an arrangement would afford. One means of assuring that such a multi-family office operate in a manner consistent with the single family office exemption and not run afoul of the "no holding out" requirement would be to impose a requirement that each identifiable family group participating in a multi-family office in reliance on the exclusion from the definition of investment adviser retain within the members of that identifiable family group a significant ownership stake in the multi-family office, perhaps at the level of 15% to 20%. If the Commission were to adopt this approach, this would impose a practical limitation on the number of families that could combine to form a multi-family office in reliance on the Proposed Rule.

I appreciate the opportunity to offer these comments and am willing to discuss them in further detail if requested.

Sincerely yours,

Henry D. Kahn

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