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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 a number of single family offices in the Midwestern United States. We are submitting this letter on behalf of a specific client to express its views on the rule that the Commission expects to adopt to implement the authority granted to it in Section 409 of the Dodd-Frank Act to define the term "family office." As you know, an entity that can comply with that rule will be excluded from the definition of "investment adviser" and thus will 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 client 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."

The client supports the analysis set forth in the comment letter filed by the Private Investor Coalition, Inc. ("Coalition") on November 11, 2010 ("Coalition Letter") regarding Investment Advisers Act Release No. 3098 (the "Release") and Proposed Rule 202(a)(11)(G)-1 (the "Proposed Rule"). However, because the client has been in existence for close to 100 years and has operated successfully under a regime that has stood the test of time and benefited generations of descendants, the client would like to express its own views to the Commission with respect to several questions raised by the Release and the Proposed Rule.

## Comments

### **1. Family Client**

Under the Proposed Rule, a "family office" is exempted from all of the provisions of the Advisers Act. Family offices exempted by the Proposed Rule will not be permitted to have investment advisory clients other than "family clients." Generally, the definition of "family clients" in the Proposed Rule includes family members, key employees, certain family-established and family-funded charitable organizations, trusts or estates existing for the benefit of family clients, certain corporate entities and pooled investment vehicles, and, subject to certain limitations, former family members and former key employees.

#### *Founders*

The Proposed Rule defines the term "founders." The definition of founder does not reflect the circumstances under which many family offices are formed. The founder of a single family office may be a person other than the "patriarch," and in the case of the client the founders were persons from the second generation who, in the early 1900s created the single family office for the benefit of family members who were then, and have since become, descendants of the patriarch. In this situation, the patriarch was deceased even though the family office is dedicated to that person's memory. The client believes that the definition of "founder" should include the situation where related persons of a common ancestor, by blood or by marriage, form the family office.

#### *Adopted Children, Step Children and Spousal Equivalents*

The client supports the inclusion of adopted children, step children, and spousal equivalents for the reasons articulated by the Commission. We note that adopted children, step children, and spousal equivalents are not specifically included in all of the various descriptions of "family members" and "key employees." We assume that this is a drafting omission that will be addressed in the final Rule.

#### *Family Member*

The client also believes that the term "family member" should include the individual, his or her parents, ancestors, and the siblings of each such person, *i.e.*, his or her aunts and uncles and great aunts and uncles. They are members of the same "family," and it is not unusual for a single family office to include such living ancestors within the single family office, as well as the descendants of those ancestors. The client also supports the inclusion of siblings of the founder, and the spouses and descendants of those siblings and of the siblings' spouse in the definition of "family member." As noted above, the client assumes 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 within the definition of "family member."

*Involuntary Transfers*

It is our client's experience that family members often leave outright gifts of cash, artwork, jewelry or other assets to friends and public charities in their trusts and estates. Their estates often take many years to settle, and, in the meantime, the family office has a fiduciary duty to manage those estates. We assume that the phrase in subparagraph (b)(1) of the Proposed Rule, "following the transfer of assets from the involuntary event," is intended to be read as commencing once it becomes legally possible to effect a transfer. The Commission should understand, however, that a number of the types of investments in which single family offices invest are illiquid, and the client endorses the position in the Coalition Letter that the single family office be required to transfer the assets as soon as it is both legally and practically feasible, and in any event should have a grace period of at least one year following the date that transfer becomes feasible to allow the single family office to dispose of illiquid assets in an orderly manner.

*Former Family Members*

The client supports the Commission's proposal to allow former members of the family to retain any investments made through the single family office, but opposes the restriction on making any "new" investments through the single family office. The spouse of the founder, and thus the mother of at least some of the lineal descendants of the founder, who has been divorced from her 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 her children and/or grandchildren. In the experience of the client, the business and family affairs of the single family office may require the former spouse to be an active participant, and in any event the family often feels that it is important to protect them. Additionally, the assets of a former spouse often pass back to family descendants who are in the single family office. Therefore, to require these assets to be moved out of the family office puts what will ultimately be family member assets at greater risk. As was true with the status of adopted children, step children, and spousal equivalents, the client believes that each single family office should make its own decision whether to include such a person as a client of the single family office without being subject to registration under the Advisers Act. The client believes that the limitation between "old" and "new" investments is artificial, and in any event only serves to put the family office at risk that it will not be able to engage in prudent investment management for the "old" assets in terms of asset allocation, changing market conditions, and changes in the client's personal circumstances.

Additionally, the client frequently manages trusts for the benefit of surviving spouses of family members, and the client requests that the Commission clarify that a widow is in fact still considered to be a "family member" for purposes of the final Rule.

*Family Trusts, Charitable Organizations, and Other Family Entities*

The client supports the inclusion of family trusts, charitable organizations, and other family non-profit entities as "family clients." However, the client believes that the requirement that such an organization must be "established and funded exclusively by one or more family members" is not practical. By definition, a "family member" must be a natural person. Several charitable foundations served by the client were, as a ministerial matter, incorporated by outside lawyers or incorporated by family office employees, not by a member of the family, and would thus appear to fail the "established" part of the test. Even if the term "established" has a more metaphysical meaning, those same charitable foundations have not been funded exclusively by family members as some have received donations from the estates and trusts of deceased family members, other family foundations, or for-profit companies controlled by the family members or family trusts. If the Proposed Rule were adopted as proposed, the client would be forced to register as an investment adviser as a result of decisions made many years ago or cease providing investment advice to the charitable foundations that have long been publicly identified with the family office. In all cases, the family foundations are controlled by one or more family members or key employees, and this should be sufficient to make them family clients.

The second part of the test is that trusts must be created for the sole benefit of family members. The client has administered trusts that were created for and funded by family members, but the trusts also name as beneficiaries certain persons who are friends (and their descendants), personal employees, and public charities. It is the client's position that the grantor or trustee of the trust is the "client" and the person to whom it is held accountable, not the person or entity to which distributions may be made. Unless and until that beneficiary directly becomes a "client" and is receiving investment advice directly from the single family office, the client believes that the existence of such a beneficiary, however immediate or however remote or contingent and even if the beneficiary is eligible to receive current distributions based on the discretion of the trustee, should have no effect on the analysis of whether the single family office is in compliance with the Proposed Rule. Finally, it is often the case that third parties seek to contribute to a trust or charity that has been sponsored by a family member. Use of the verbs "established or controlled" would permit a family to solicit contributions from non-family members to the charity which is controlled by the members of the family, and would permit the charity to receive such contributions. For example, one of the trusts administered by the client permits up to 20% of the income earned by the trust to be distributed to charities that are not family foundations. Those charities would be losing an important source of funding if the client were required to cease making those discretionary contributions solely to keep the client from registering under the Investment Advisers Act.

### *Key Employees*

The Client supports the inclusion of certain key employees in the definition of "family clients." The Client supports the provision in the Proposed Rule that would permit a key employee to create trusts for the ownership of an investment and name members of the key employee's family as beneficiaries of those trusts. However, the client does not agree that there should be restrictions on additional investments by the key employees after their employment by the family office has ended. In the history of the Client, it has had three Presidents each of whom served for more than 20 years, and one of whom was an employee for more than 40 years. The philosophical and practical issues discussed above with respect to former spouses apply equally here; like former family members, key employees desire the protection of the family office for a spouse of a former employee who is advancing in age, and the ability to provide such services is an important additional recruitment tool. In the case of the client, the assets of the surviving spouse of one former president were managed by the family office until her death at age 97. In the absence of the definition permitting the retention of former key employees, the Commission should clarify that management of the "old" assets (including the collection and investment of interest and dividends) does not constitute the taking of new investments from a former key employee.

## **2. Ownership and Control**

The requirement that the family office be "wholly owned and controlled, either directly or indirectly, by family members (who are natural persons)" poses several problems for this client. The proposed definition, based on the concept of "owned and controlled," does not adequately reflect the variety of organizational arrangements that are already in place with single family offices and which in most instances cannot be changed easily. A family office, while operating exclusively for the benefit of a single family, may be owned by: (a) professional managers who are employed by the family office; (b) trusts established for the benefit of a family, but which have a third-party trustee; or (c) companies established for the benefit of a family, but which may be directed by professional management and/or outside directors. The client believes that the key element of this requirement should be that the single family office is operated for the benefit of family clients. Stipulating that a family office must be owned, controlled, or operated for the benefit of family clients would not interfere with the myriad of ownership and management structures that exist within family offices. It is critical to this client in particular that the Commission confirm that a single family office that is owned and/or controlled by family trusts which are family clients, and which have a third party trustee(s), is intended to be a "family office" within this definition.

### **3. Holding Out**

The client supports the requirement that the family office not hold itself out to the public as an investment adviser.

### **4. Grandfathering Provisions**

The client supports the grandfathering required by Section 409(b)(3) of the Dodd-Frank Act.

### **5. Previously Issued Exemptive Orders**

The client believes that each of the family offices that previously received exemptive orders from the Commission should be allowed to decide whether it wishes to continue to rely on the exemptive order that it received or decide to rely on the Proposed Rule.

### **6. Fees**

The client does not believe there should be a restriction on the structuring of fees charged by family offices because provisions of the Internal Revenue Code may necessitate that family offices charge fees, and certain family offices may have assets in their own right which independently generate income. Requiring family offices to create and manage a separate family office to comply with a restriction on the structuring of fees would impose an undue burden.

### **7. Cost Benefit Analysis**

At page 30 of the Release, the Commission recognizes that some family offices may be forced to consider whether to restructure their business to meet the conditions in the Proposed Rule. The client believes that, as written, most single family offices would have to change their structure or operations. As emphasized in the Coalition's Letter, any reorganization would involve significant expenses (potentially in the millions of dollars), and may be impossible without catastrophic adverse consequences. However, if the recommendations made in the Coalition Letter and set forth above were adopted, the client believes that many fewer single family offices would need to restructure their operations. The client expects no less than a \$25,000 to \$35,000 cost in external legal fees for a single family office to engage in a one-time evaluation of its status after the Rule is finally adopted.

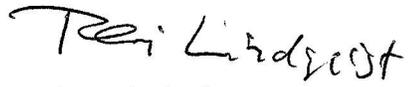
### **Conclusion**

The client believes that, taking into account the drafting recommendations that have been made throughout this comment letter, the Proposed Rule would meet the needs of the client and

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similarly situated single family offices. Thank you again for this opportunity to express the client's comments.

Sincerely,

A handwritten signature in black ink that reads "Teri Lindquist". The signature is written in a cursive, flowing style.

Teri A. Lindquist