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**VIA ELECTRONIC MAIL**

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street NY
Washington, D.C. 20549-0609

Re: Comments with regard to Proposed Rule re: Family Offices
File No. S7-25-10

Dear Ms. Murphy:

We are submitting this comment letter in response to the request for comments made by the Securities and Exchange Commission (the "Commission") with respect to the proposed new rule 201(a)(11)(G)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). (We refer to the proposed rule as the "Proposed Rule" and the proposing Release No. IA-3098[1] relating thereto as the "Release").

We appreciate the Commission's thoughtful approach to this issue and generally agree with the Proposed Rule. We note that the final rule needs to be flexible enough to allow for the intricacies of modern family office structures and to allow family offices to continue to evolve and adapt over time while balancing those interests against the public's need to be protected against systemic risk. We thus respectfully submit the below comments to the Proposed Rule.

Family Member Definition

In the Proposed Rule, family members are defined as including (i) the founders, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents; (ii) the parents of the founders; and (iii) the siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren) and such lineal descendants'

[1] Investment Advisers Act Release No. 3098 (October 12, 2010), (17 CFR Part 275).

spouses or spousal equivalents.[2] While we generally agree with the Commission's proposal of the definition of family member, we suggest that it be broadened slightly in scope. As mentioned in the Release, certain legally created relationships resemble the types of relationships that are currently included in the definition of family member, depending on the facts and circumstances in each instance.[3] We suggest that with respect to certain of these non-traditional relationships, the ultimate decision as to whether the individuals comprising such relationships should be treated as family members should be left to the family. We therefore agree with the inclusion of spousal equivalents and stepchildren in the definition of family member. Further, we suggest including foster children as well as children and guardians involved in guardianship relationships in the definition of family member, as we believe that the same rationale for including stepchildren and spousal equivalents applies to including foster children and children and guardians involved in a guardianship relationship. Permitting foster children and individuals involved in a guardianship relationship to be included as clients of the family office leaves to the family members the decision of whether they wish to include them as part of the family office clientele and thus benefit from the family office arrangements. We do not think that allowing family members to choose to include these individuals as family members would expand the family office's clientele to such an extent that it would start to resemble a typical commercial investment adviser nor would it impinge upon any policy issues.

Family Client Definition

The Proposed Rule states that family clients generally include: (i) any family member; (ii) any key employee; (iii) any charitable foundation, charitable organization, or charitable trust, in each case established and funded exclusively by one or more family members or former family members; (iv) any trust or estate existing for the sole benefit of one or more family clients; (v) any entity wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, family clients, provided that if such entity is a pooled investment vehicle it is excepted from the definition of an "investment company" under the Investment Company Act of 1940, as amended (the "Company Act"); (vi) any former family member, provided that after becoming a former family member no additional investments are permitted (other than additional investments the former family member is contractually obligated to make) and (vii) any former key employee, provided that upon the end of such individual's employment by the family office, no additional investments are permitted (other than additional investments the former family member is contractually obligated to make).[4]

This definition of family client also seems too restrictive, given the historical exemptive relief provided by the Commission. We support including former family members and former key employees to retain investments held through the family office at the time they became former family members or former key employees, as applicable, but also suggest that they be permitted to make additional investments through the family

[2] Proposed Rule 202(a)(11)(G)-1(d)(3).
[3] See Release, supra at 63756.
[4] Proposed Rule 202(a)(11)(G)-1(d)(2).

office as well. As with the above rationale, such an adjustment to the Proposed Rule would not *require* such former family members and former key employees to continue to be treated as family clients as though the separation had not occurred, but rather gives family offices the option to continue treating such individuals as family clients. It is conceivable that former family members or former key employees are so integrated into the family that an amicable divorce, retirement or other termination of such relationships should not necessarily terminate their position as family clients. Denying such individuals the benefits of a family office does not detract from the intent of the Advisers Act.

With respect to key employees specifically, allowing for such co-investment enables family offices to attract talented investment professionals,[5] and it is conceivable that an arrangement whereby such co-investment is permitted to continue after retirement or termination of an employment relationship could be contemplated.

Additionally, the Proposed Rule does not accommodate arrangements where family offices that provided investment advice to entities that incidentally or minimally benefited non-family clients were granted exemptive relief (see e.g., Woodcock Financial Management Company, LLC, Investment Advisers Release No. IA-2772 (August 26, 2008) (notice) and 2787 (order) (family office provided advisory services to entities all owned exclusively by the family and operated exclusively for the benefit of the family *and/or charitable organizations*). We suggest that the Commission should consider such investment structures in adopting its final rule.

We note that as an alternative to broadening the definition of family clients, we support an inclusion of a de minimis exception for a small number of persons or entities who, although do not fit the strict definition of family member, could be accepted as such in the discretion of the family office. We note that the Commission has adopted similar de minimis "safe harbors" in other contexts (e.g., Regulation D under the Securities Act of 1933, as amended, permits issuers to offer securities to no more than 35 non-accredited investors who do not satisfy the eligibility standards associated with other exemptions). Allowing for a de minimis number of persons or entities to be family clients would cover certain unique family structures without contravening the spirit of the Advisers Act. Another option would be for the Commission to allow a de minimis percentage of assets to be held by non-family family clients relative to the total assets managed by the family office. This would enable certain persons or entities that are integrated within the family structure to benefit from the advice of the family office, despite not falling within the definition of family client.

## Involuntary Transfers

We ask that the Commission elaborate on what types of involuntary transfers are contemplated by the Propose Rule, other than transfers resulting from the death of the family member. In its proposals, the Commission contemplates a four-month time period after an involuntary transfer to allow the family office to orderly transition that client's

[5] See Release, supra at 63758.

assets to another investment adviser, seek exemptive relief, or otherwise restructure its activities to comply with the Advisers Act.[6] We think that family clients should be permitted to transfer assets to non-family clients upon a death or other involuntary event without jeopardizing the ability of the family office to rely on the proposed rule. We do not think that such an involuntary transfer would pose systemic risk. Or, if the Commission is unwilling to allow this, we suggest that the time period be extended, as in certain situations four months may not be sufficient time for the family member's assets to be transferred to another investment adviser. This would certainly be true, by way of example, in the case of probate challenges and will contests which often require more than four months to resolve. The four month timeframe may also be too short if a family member's investment is in a private investment vehicle which has liquidity issues and is not able to honor a withdrawal or transfer within this time period.

Ownership and Control

The Proposed Rule provides that in order to avail itself of the exclusion from the definition of investment adviser, the family office must be wholly owned and controlled, either directly or indirectly, by family members.[7] We agree that this requirement is generally consistent with prior exemptive relief. However, we note that the Commission has also granted exemptive relief to certain family offices where the office was not wholly controlled by family members, but rather, by a majority of family members (see WLD Enterprises, Inc., Investment Advisers Release No. IA- 2804 (October 17, 2008) (notice) (majority of board of directors of family office comprised of family members); see also Slick Enterprises, Inc., Investment Advisers Release No. IA-2736 (May 22, 2008) (notice) (majority of board of directors of family office comprised of family members). Additionally, the Commission has granted exemptive relief to family offices in certain situations where the offices were not wholly owned by family members (see Moreland Management Company, Investment Advisers Act Release Nos. 1700 (Feb. 12, 1998) (Feb. 20, 1998) (notice) and 1706 (Mar. 10, 1998) (order) (family office owned by a trust in which half of the trustees were independent and half of the trustees were family members); see also In the Matter of the Pitcairn Company, Investment Advisers Act Release No. 52 (Mar. 2, 1949) (four churches owned small interest in family office). We encourage the Commission to follow its prior exemptive relief and include provisions in its adopted rules permitting minority ownership stakes or control of family offices.

Multifamily Family Office

As noted in the Release, the Proposed Rule would not extend to a multifamily office. We note that in certain cases, two or more family offices join together in order to achieve economies of scale and allow for maximum cost and operational efficiency. We suggest that in the event each family office would qualify as a family office under Rule 202(a)(11)(G)-1, they would be able to remain within this exclusion even if they are joined together. If each family office qualifies as such under the rule then they should not be forced to register simply because they have sought to avail themselves of cost and

[6] See Release, supra at 63757.

[7] Proposed Rule 202(a)(11)(G)-1(b)(2).

operational efficiency and other benefits of economies of scale. We would suggest that in order to preserve the distinction between the families, any investment decisions would have to be made separately (even if each family office is making the same investment). Multifamily offices which operate in this manner do not resemble commercial advisers any more than they would if they operated separately. We do not believe that allowing multifamily family offices to operate within this exclusion would pose any systemic risk to the public.

We appreciate the opportunity to comment on the Proposed Rule and encourage the Commission to consider more flexibility in its final rule to allow for the complex issues surrounding modern family offices. We do not believe that adopting the suggestions discussed herein would contradict the intent of the Advisers Act.

Respectfully submitted,

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