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Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-25-10

Dear Ms. Murphy:

I appreciate the opportunity to provide Fried, Frank, Harris, Shriver & Jacobson LLP's comments to the Securities and Exchange Commission (the "Commission") with respect to the proposed rule (the "Proposed Rule") set forth in the Commission's Release No. IA-3098 (the "Release") defining "family offices" that would be excluded from the definition of "investment adviser" under the Investment Advisers Act of 1940, as amended (the "Act").[1] We represent a number of family offices that historically have been exempt from registration under the Act and are concerned that the Proposed Rule may require them to obtain relief from the Commission in order to remain exempt. We believe that such a result is not consistent with the intent of the Dodd-Frank Act and urge the Commission to consider the changes discussed in this letter in order to avoid that result.

Our foremost concern is that the Proposed Rule unnecessarily limits the availability of the exemption from registration to family offices that have been founded by a single natural person and his or her spouse or spousal equivalent.[2] We believe that many family offices are not established by the ancestral source of a family's wealth but, rather, several generations later, by multiple family members for the benefit of the entire extended family. Indeed, it is often the growth and expansion of a family and its assets that motivate a family to realize the administrative and operational benefits associated with establishing a family office. We therefore suggest revising the Proposed Rule's focus on a single founder (and such person's spouse or spousal equivalent) and instead defining an eligible family office by reference to the shared ancestral lineage (through consanguinity, matrimony or its equivalent) of its founders.

[1] *Family Offices*, Advisers Act Release No. IA-3098, 75 Fed. Reg. 63,753 (proposed October 12, 2010) ("Release").

[2] Proposed Rule 202(a)(11)(G)-1(d)(3).

This could be accomplished by defining "founders" to mean "one or more natural persons who share a common ancestor within three generations, and such persons' spouses or spousal equivalents, for whose benefit the family office was established and any subsequent spouse or spousal equivalent of such individuals."

We support the Commission's recognition that a family includes stepchildren and spousal equivalents. In response to the Commission's request for comment, we believe that the rule should treat stepchildren and biological children identically.[3]

The Commission recognizes in the Release that the exemption from registration should continue to be temporarily available following the involuntary transfer to non-family members of assets in respect of which the family office provides investment advice.[4] The Proposed Rule requires that an involuntary transferee will only qualify as a permissible client of an exempt family office for a period of four months following the occurrence of the involuntary transfer.[5] This requirement would effectively require a third party transferee to divest itself of such an asset within four months of the involuntary transfer, which, in the case of certain assets, would be unduly burdensome and complicated and, in certain circumstances, virtually impossible. In addition, it may not be possible for the family office to require expedient divestment of assets by a third party, thus giving an uncooperative or dilatory third party transferee the ability to jeopardize a family office's exemption from registration. We therefore recommend treating involuntary transfers as the Commission has proposed to treat investments by former employees; namely, permitting involuntary transferees to retain the involuntarily transferred assets while prohibiting such transferees from investing additional assets with the family office. As in the former employee context, this approach would safeguard the limited nature of the exemption while sparing family offices and third party transferees the burden and complexity associated with rapid divestment of involuntarily transferred assets.

We support the Commission's inclusion of charitable foundations, organizations, trusts and estates within the definition of permissible family clients, but recommend that trusts and estates not be required to exist for the "sole" benefit of family clients.[6] Many such trusts and estates include provisions naming charitable organizations or other third parties as contingent beneficiaries or remaindermen. We believe that requiring the amendment of the terms of the instruments of such trusts and estates in order to comply with the Proposed Rule—which, in some cases, would be impossible—would be unnecessarily burdensome. Instead, we suggest permitting trusts and estates that exist "primarily" for the benefit of family members to qualify as permissible family clients. In addition, because charitable lead trusts and charitable remainder

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[3] Release at 63,755 – 63,756.

[4] *Id.* at 63,757 ("The proposed rule would permit the family office to continue to advise such a client without violating the terms of the exclusion for four months following the transfer of assets resulting from the involuntary event . . .").

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

[6] Proposed Rule 202(a)(11)(G)-1(d)(2)(iii), (iv); Release at 63,757 ("We also propose to treat as a ''family client'' any charitable foundation, charitable organization, or charitable trust established and funded exclusively by one or more family members any trust or estate existing for the sole benefit of one or more family clients.").

trusts (trust structures having charitable entities as current beneficiaries and remaindermen, respectively) are commonly used estate planning structures, we suggest the Commission clarify that they are included within the scope of permissible family clients.

The Proposed Rule requires that all charitable entities be funded exclusively by current or former family members.[7] There are, however, a variety of circumstances in which non-family members may donate assets to family charitable entities (e.g., to honor the family or one of its members or in recognition of a moral debt owed to the family). Because, immediately upon donation, such assets are invested for the benefit of the family charitable entity and are in no way tethered to their donor, we believe that permitting non-family members to contribute assets to family charitable entities would not undermine the policy rationale of the exemption. We therefore suggest permitting charitable entities to remain permissible family clients irrespective of their acceptance of donations from third parties.

We support the Commission's decision to permit "key employees" of a family office to be treated as family clients who are eligible to receive advice from exempt family offices.[8] As the Commission has recognized, a family office should have the flexibility to incentivize and reward key employees with equity in investment vehicles advised by the family office as well as to provide them with the opportunity to invest alongside the family.[9] However, we believe that the same policy rationale justifies permitting family offices to award key employees with equity interests in the family office itself, which is currently a common practice. In addition, for various tax and estate planning reasons, it is often the case that a family office is owned in whole or in part by a family trust. Lastly, it is entirely possible for a family member who owns an interest in the family office to, as a result of a divorce, cease to be a family member. Being required to divest a family member of its interest in the family office prior to such person becoming a former family member would be unnecessarily burdensome and may not even be possible. We therefore propose that the Commission permit family offices to be owned and controlled by "family clients," as opposed to solely by "family members."

We also propose two amendments to the definition of "key employee" that we believe are technical and uncontroversial. First, the Proposed Rule defines a "key employee" as any natural person who is an "executive officer," director, trustee or general partner of the family office.[10] We suggest clarifying that the term, "executive officer," corresponds with the same term in Rule 205-3(d)(4) of the Act. Second, given the widespread use in the asset management community of multiple advisory and management entities (for innumerable tax and structuring reasons), the

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[7] Proposed Rule 202(a)(11)(G)-1(d)(2)(iii); Release at 63,757.

[8] Proposed Rule 202(a)(11)(G)-1(d)(2)(ii); Release at 63,758 ("We also are proposing to treat as family members certain key employees of the family office so that they may receive investment advice from and participate in investment opportunities provided by the family office.").

[9] Release at 63,758 ("Permitting participation by key employees allows such family offices to incentivize key employees to take a job with the family office and to create positive investment results at the family office under terms that could be available to them as employees of other types of money management firms.").

[10] Proposed Rule 202(a)(11)(G)-1(d)(6).

definition of "key employee" should include "key employees" of "family clients" as well as entities established to provide services primarily to family clients.

We thank the Commission for giving us the opportunity to comment on the Proposed Rule and for its consideration of our suggestions and recommendations. If you have any questions, please feel free to contact me at 212.859.8662.

Very truly yours,

Jonathan S. Adler

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