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Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-100

Re: Proposed Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940
File No: S7-25-10

Gentlepersons:

We are submitting the following comments on proposed rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 on behalf of Simpson Estates, Inc., a single family office. Simpson Estates appreciates and applauds the close attention that the Commission typically accords to comments on its rule proposals and believes that these comments will assist the Commission in the complex task of crafting a rule that is not unduly restrictive – thus avoiding what should be unnecessary exemptive applications (or advisory registrations) – but also implements the policy goal of differentiating family offices from investment advisers that provide advisory services on a commercial basis. Simpson Estates' comments are as follows.

1. <u>Trust and Estate Beneficiaries; Involuntary Transfer Interaction</u>

Paragraph (d)(2)(iv) of the proposed rule would confine trust and estate family clients to those that exist "for the sole benefit of one or more family clients." This definition is too narrow for a number of reasons.

First, even if it were feasible or appropriate to confine to family clients the beneficiaries of trusts and estates established after the adoption of the family office definition, the existing trusts and estates advised by family offices were established, in many cases long ago, when no one contemplated the possible removal of the section 3(b)(3) private client exemption from the Advisers Act (and in some cases even before the Advisers Act was enacted in 1940). It is common for trusts and estates to provide for charitable beneficiaries that are not family clients, especially but not exclusively as a final backstop if primary family beneficiaries die unexpectedly. Beneficiaries can also include family friends and retainers and former family members (including former family members who already had that status when the instruments governing the trust or estate were composed). It would frequently be impossible to amend the governing instruments to comply with the proposed rule's definition, giving rise to the perverse consequence that, in the absence of obtaining a one-off exemption, a family office advising such

a trust or estate, or a family office executive serving as a trustee, would be required either to cease providing the advice (or relinquish the trusteeship) or to register as an investment adviser.

Second, it is particularly common for wills to provide for bequests to both individuals and charities that are not family clients. Because, under the proposed rule, an estate would apparently not qualify as a family client if its beneficiaries are not exclusively family clients, an exempt family office could continue to advise (or have one of its executives serve as the executor of) many estates only during the four-month involuntary transfer period permitted by paragraph (b)(1) of the proposed rule. That period is wholly inadequate to complete the administration of even a simple estate, much less the complex estates established under the wills of many members of wealthy families. While this problem might be resolved by modifying the involuntary transfer provision – for instance, to provide that a family office must cease to provide advice with respect to assets involuntarily transferred to a non-family client as soon as reasonably feasible (which could be a number of years) – there is simply no reason for an estate of a family client not to be considered a family client, regardless of the identity of its beneficiaries, during its entire existence. The executor of an estate, after all, acts in the direct stead of the decedent; his or her job is to implement faithfully the instructions of the decedent set forth in the decedent's will. In that light it is hardly coherent in this context to characterize an estate as "existing for the benefit" of its beneficiaries, any more than the decedent him or her self "existed for the benefit" of those beneficiaries. Accordingly, investment advice to an estate should be considered the equivalent of advice to the decedent, and an involuntary transfer on account of death should be deemed to occur only when the executor of the estate actually distributes estate assets to a beneficiary (which may, of course, be a testamentary trust). Even then, for the reasons stated in the comment letter submitted by the Private Investor Coalition, the period during which a family office should be permitted to continue to provide advice with respect to assets involuntarily transferred to a non-family client should at a minimum be extended substantially beyond four months, and preferably for as long as may be reasonably necessary to assure the proper transfer of the administration of the transferred assets.

Finally, even in the case of newly established trusts (either by one or more living settlors or testamentary trusts), the confinement of family client trusts to those that are exclusively for the benefit of family clients serves no policy interest. The beneficiaries of a trust are essentially a special kind of donees who receive trust distributions when made by the trustee (either pursuant to specific instructions in the trust instrument, at the trustee's discretion or both); the "client" who is the recipient of a family office's investment advice to a trust is more coherently considered to be the settlor of the trust, not its beneficiaries (albeit for trust law purposes the settlor typically retains no property rights in the trust's assets). Specialized trusts, such a charitable lead trust, may be designed to make distributions for charitable purposes with ultimate family beneficiaries. A trustee is required as a fiduciary to carry out in good faith the instructions in the trust instrument appointing him or her, based upon the confidence reposed in the trustee by the settlor. A settlor should not be faced with a choice between, on the one hand, placing a trust with non-family-client beneficiaries in the hands of a trustee in whom the settlor does not have equivalent confidence and, on the other hand, requiring the family office that employs the preferred trustee

to register as an investment adviser. Furthermore, because only a family client could establish such a trust, allowing family office trustees to provide advice to all family-client-established trusts clearly would not present a danger of extending the family office's compensated provision of services to members of the public.

2. Advisory Services to Former Family Members; Stepchildren

The proposed rule would generally allow an exempt family office to continue to provide services to former family members (former spouses, spousal equivalents and stepchildren) only "with respect to assets advised (directly or indirectly) by the family office immediately prior to the time that the individual became a former family member ..." Simpson Estates has several concerns about this restriction on continuing advice.

The cessation of a marriage or equivalent relationship is frequently not an event that severs a family's interest and involvement in the financial well-being of a former family member. The family member in question may continue to share parental responsibilities with a former spouse or spousal equivalent; in the case of a former stepchild, the family member's affection and care for the child, and the child's integration into the family, will often continue unabated (and in any event the child will not have been a party to the severance of the relationship); the family member may continue to have financial responsibilities for the former family member pursuant to a divorce decree or other agreement; and the family member may have a strong continued emotional investment in the welfare of a former spouse or spousal equivalent. None of those interests is confined to the arbitrary portion of the former family member's assets with respect to which the former family member was receiving family office investment advice when a spousal or spousal-equivalent relationship ceased. If the former family member does not wish to continue to receive family office investment advice with respect to his or her assets, the former family member is of course free to look elsewhere. However, investment advice is frequently most helpful when received from an adviser who has a full and rounded view of the client's financial affairs and can assist the client in the deployment of all the client's investments. Accordingly, Simpson Estates strongly urges the Commission to provide that no restriction will apply to the provision of investment advice to former family members.

As a matter of interpretation, the Commission should also clarify that the status of "former family member" never arises as a result of death. It makes no sense to characterize a widow or widower, or a spousal equivalent or stepchild, of a deceased family member as a "former family member." Equally, if a non-family-member spouse or spousal equivalent dies, a child of the deceased at the time of the child's parent's death cannot be coherently described as a "former" stepchild.

Furthermore, we understand the Commission's inclusion of stepchildren in the definition of family member to confer upon a stepchild permanent family membership for purposes of the proposed rule (including with respect to a stepchild's own spouse or spousal equivalent and stepchildren). As previously noted, a stepchild does not control the cessation of a spousal or

spousal equivalent relationship with a family member on the part of the stepchild's parent; therefore, a stepchild's status as a family member for all purposes should not be affected by a rupture in the stepchild's parent's relationship with a family member.

3. Family Determination of its Own Members

As a general matter, Simpson Estates believes that a family office that meets the following conditions should be able to determine the persons whom the family considers to be "family" in connection with deciding to whom the family office will provide investment advisory services, without specification in the Commission's defining rule of the required nature of the family connection: the office (1) is owned (including through trusts for the primary benefit of family members) and controlled by family members who are within the definition of "family member" that is adopted by the Commission in its final rule, (2) does not generate profits for distribution to those family members, (3) does not compensate any of those family member for the provision of services to more than a de minimis extent, (4) provides investment advisory services only to persons approved by those family members (*i.e.*, not upon the decision of the family office's professional staff), (5) does not hold itself out to the public as an investment adviser and (6) does not charge clients who are not within the definition of "family member" that is adopted by the Commission in its final rule an amount for the provision of investment advisory services that is disproportionate to the amounts charged for similar services provided to family members as defined in the final rule. In addition, in order to avail itself of this aspect of the family office exemption, a family office would be required to report that it was doing so to the Commission and to be prepared to demonstrate that it complies with the specified conditions.

Simpson Estates believes that the adoption of such an approach would allow the Commission to remove itself, under carefully tailored circumstances, from the difficult enterprise of defining the persons with a family connection to whom a family office may appropriately provide advisory services while at the same time serving the Commission's policy goal of assuring that a family office not be the equivalent of a "family run office" that provides services for profit-based motives to third parties. Especially given the lengthened life spans fostered by modern medicine, family connections can be complex, and a family office meeting these criteria might provide investment advisory services, for instance, to the relatives of a family member's spouse or the children of a family member's former spouse (half-siblings of the family member's children) born after that spouse's divorce from the family member. Simpson Estates believes that such an approach would foster the Commission's ability to devote its resources to the protection of the investors whose interests motivated the enactment of the Advisers Act and the Commission's regulations under it.

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If you would like to discuss these comments on behalf of Simpson Estates, please call me at 212-547-5657 or email me at elaurenson@mwe.com.

Very truly yours,

Edwin C. Laurenson