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November 18, 2010

Submitted By Email - Rule-Comments@SEC.gov

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

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

Dear Ms. Murphy:

Proposed Rule 202(a)(11)(G)-1 ("Proposed Rule") was issued by the Securities and Exchange Commission (the "Commission") to implement the authority under Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") in order to exclude single family offices from registration or regulation as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). On behalf of several single family office clients, we submit the enclosed comments on the Proposed Rule.

1. Overview.

The Proposed Rule allows a family office to qualify for exclusion as an investment adviser under the Advisers Act if (1) its only clients are "family clients" (except in limited circumstances, like the death of a family member or key employee or other involuntary transfer), (2) it is wholly owned and "controlled" (directly or indirectly) by "family members" and (3) it does not hold itself out to the public as an investment adviser. The Proposed Rule contains definitions of the terms "family client", "family member", "founders" and "control." In general, we believe these definitions are too restrictive because they fail to take into account that (a) many generations of one family may be served by a family office and (b) there are various structures used by families for investment, tax and succession planning purposes. Exhibit A is attached, reflecting proposed changes to the definitions in the Proposed Rule and proposed additional defined terms, which changes and defined terms are the primary subjects of our comments.

By letter dated November 11, 2010, the law firm of Perkins Coie submitted comments on the Proposed Rule on behalf of The Private Investor Coalition, Inc. (the "Coalition"). In general, we agree with most of the views expressed in such letter, but desire to add comments on specific areas and offer specific changes to the proposed definitions contained in the Proposed Rule.

One of the purposes of the Dodd-Frank Act is to “protect consumers from abusive financial services practices.” Our comments are based on the premise that it is not necessary to define a family office as narrowly as in the Proposed Rule in order to accomplish this purpose. As an example, the definition of family member in the Proposed Rule would likely cause large numbers of existing family offices to register as an investment adviser merely because they serve persons who are related through a common ancestor at a generation or more above parents. Although an alternative might seem to be that the office could be restructured, that is often not possible given existing investment arrangements and the irrevocable nature of multi-generational trusts. Finally, we believe that the proposed changes to the definition of “founders” and “family member” described in Exhibit A will still require entities which provide investment advice to the general public to register, but exempt offices which are clearly serving one family, albeit an extended family.

2. Definitions of Founders and Family Member.

a. Founders.

The term “founders” appears to be limited to one natural person and that person’s spouse or spousal equivalent, but it would be common for several siblings or cousins to join together and form a family office. Therefore, we suggest that “founders” be defined to allow more than one founder, but require that the founders have at least one common ancestor or be spouses or spousal equivalents to each other in order to maintain the concept that the office is serving a single family.

We also suggest that including “spouse and spousal equivalent” in the definition of founder is confusing when trying to determine who are the parents and descendants of the founders (or, in our proposed change, the ancestors of the founders). Instead, we suggest that, except in the case where two spouses or spousal equivalents are both founders, the reference to spouse or spousal equivalent be moved to the definition of family member. Especially when there are multiple marriages, it will make it clearer who is included or excluded when divorces occur.

Since a family office often exists for multiple generations, the founder will eventually be deceased. Our revision makes it clear that the founder of an office is determined when the office is established and does not change when the person dies. The founder only changes if a new office is established.

b. Family Members.

We suggest that the definition of “family member” be expanded to include all ancestors of the founders, the siblings of the persons at each generational level and the descendants, spouse and spousal equivalents of those people.¹ By doing so, new family offices can serve the same group of people as an older family office which may have been founded several generations ago and is now serving aunts, uncles, and first, second and third cousins. For example, if a family office was founded 50 years ago by the grandparents of the currently living family members, those grandchildren are now siblings and first cousins. Under the Proposed Rule, because descendants of the founder can be served by a family office, these grandchildren could all continue to be served by that family office without the office being required to register under the Advisers Act. However, the Proposed Rule would not allow them to initially form a family office together or for one of those grandchildren to form a family office which would ultimately serve his or her cousins. We believe this is inconsistent; therefore, our proposed language would allow for these cousins (as well as other more distantly related persons, but who still have a common ancestor) to form a new office.

While we agree with the Coalition’s position that former family members should not be automatically excluded from a family office, we recognize that there may be some concern that the family group could be significantly expanded by continuing to include all former family members. Thus, we recommend narrowing the class that would be considered former family members. We have allowed a parent of the lineal descendants of a founder (i.e., a former spouse) to continue to be a family member. Further, we have clarified that a person continues to be treated as a spouse or spousal equivalent upon his or her death (thus allowing his or her relatives to continue the relationship with the family office) or the death of the applicable person (thus allowing the spouse or spousal equivalent, as well as his or her relatives, to continue the relationship with the family office). On the other hand, in the definition of “family trust” described below, we believe that a trust which includes a former family member as a beneficiary should continue to be allowed as a family client because the terms of irrevocable trusts cannot be changed, which means that it is likely to be impossible to eliminate them from such trust.

With respect to the Commission’s specific request to comment about whether stepchildren should be included, we support that proposal because there is often no distinction between an adopted child and a stepchild from a family’s perspective. In many cases, a stepchild would be adopted by the child’s stepparent but for the fact that the child’s natural parent may refuse to consent. In other cases, the stepchild is over the age of 21 when his or her parent and stepparent were married, and there seemed to be no reason to adopt the child at the time.

¹ We eliminated subsection (d)(3)(iii) because it is now subsumed within (d)(3)(ii).

However, in general a stepchild is often viewed as the equivalent of a biologically related child. Similarly, we recommend that half brothers and half sisters² be included in the definition of siblings of ancestors.

We recommend that the proposed definition of “spousal equivalent” be revised to include a person who is recognized as a spouse or spousal equivalent under the laws of the state in which he or she resides or otherwise under state law.

3. Definitions of Family Client, Family Entity and Family Trust.

We recommend adding definitions of “family trust” and “family entity” and expanding the terms beyond the manner in which the Proposed Rule defines them within the definition of “family client.” Although expanding the definition of “family member” as we propose would help solve many issues related to the definitions of charitable entities and trusts which can be served, that is not quite sufficient.

In the charitable context, charitable entities established by ancestors three or more generations ago may still be in existence and be managed by current family members. Unless the definition of family members is revised, such organizations would not be able to be served by the family office. However, in addition to expanding the definition of family members so that more charitable organizations would be included, the definition of charitable entities should be clear that they do not have to be funded by family members who are currently living and that funding could come from a trust for the benefit of a family member or from another charitable entity established by a family member. For example, it is not uncommon for a private foundation created by a parent or grandparent to ultimately be divided into separate foundations operated by siblings or cousins. Therefore, even if the definition of family member is not expanded, we suggest that it would be appropriate to expand the definition of charitable entity that can be a family client to charitable entities which are either (1) “substantially funded” by current or deceased family members and former family members, existing or terminated family trusts, and other existing or terminated family entities, or (2) controlled, directly or indirectly by one or more family members. This allows there to be the necessary connection between the

² Step-brothers and step-sisters have no blood relationship; they are connected because one child’s father is married to the other child’s mother but neither child has a common parent. In contrast, half-brothers and half-sisters have one common parent. For example, a couple has one child (“Child A”), and then gets divorced; the mother gets remarried and has a child with the second husband (“Child B”) and the mother’s second husband has a child from a prior marriage (“Child C”); Child A is a half sibling to Child B but a step-sibling to Child C. It is unnecessary to include half siblings in the reference to lineal descendants of a person because they are, by definition, descendants.

charitable entity and the family, either through funding or control, but also allows the charity to receive contributions from other persons.

Our proposed definition of family entity also includes non-charitable entities, such as limited liability companies, partnerships and corporations, which are included within the definition of family client in the Proposed Rule. We eliminated the “wholly owned” requirement and substituted “substantially owned,” but retained the requirement that the entity be controlled by family clients, which would allow for control by family members in conjunction with key employees. We propose defining “substantially owned” to be ownership of 80% or more of the equity interests, thereby allowing relatively *de minimus* investments by others. We eliminated the requirement that the entity be “operated for the sole benefit of one or more family clients” as it seemed redundant of the ownership requirement.

Similarly, the definition of a trust in the Proposed Rule is too narrow because the trust must be for the sole benefit of family members, key employees, charitable entities, former family members and former employees. Trusts often exist for the benefit of senior as well junior generations, there are ancillary beneficiaries of trusts (particularly at the death of one person where some assets may go to friends, other relatives or public charities) or a family member may be the primary beneficiary, but other persons are included as possible beneficiaries. While much of this would be solved by expanding the definition of family member as we propose, eliminating the requirement that a trust be for the sole benefit of family clients, and substituting a primary benefit requirement, is also crucial. We have also specifically included revocable trusts created by family members as family clients after the death of such family member and during the period of administration, regardless of the underlying beneficiaries of the trust. This will allow the trustee to properly administer the trust assets and not be forced to either prematurely dispose of assets or terminate a relationship with the family office at a time when its involvement is probably most critical.

We also suggest that an estate of a deceased, minor or a disabled family member be separately defined as a family client. This is similar to a trust relationship, and should be determined by reference to the status of the deceased, minor or disabled person, and not the person appointed as guardian (i.e., if the deceased person was, or if the minor or a disabled person is, a family member, the estate can be served by the family office).

4. Definition of Key Employee.

With respect to the definition of “key employee”, we support the comments made on behalf of the Coalition, including that the employee not be required to serve in the relevant capacity for twelve months before being considered a key employee. However, we also suggest

that there are other employee relationships which should be covered in the Proposed Rule. Families will often have multiple entities with employees, in addition to the family office, which perform different functions on behalf of the family. For example, if a family formed a private trust company and a family office, the president and other key employees of the private trust company should be permitted to be served by the family office. We suggest that a key employee of any entity which is substantially owned and controlled by one or more family clients be permitted to be a client of the family office.

5. Definition of a Family Office.

It is unclear whether the portion of section (b)(1) of the Proposed Rule, related to transfers to a person who is not already a family client but who becomes a client of the family office as the result of the death of a family member or some other involuntary, is intended to be measured from the date of death or date of actual transfer to the non-family client. Because we include the estate of a family member and a revocable trust created by a family member within the definition of family client during the entire period of administration, we believe the relevant date should be the date of actual transfer to the non-family client. Even with that, we suggest that treating the recipient as a family client for only four months is too short. If the Commission requires that a time limit be imposed, we suggest at least one (1) year after any transfer to a non-family client from the family member's estate or revocable trust. Another option would be to treat non-family beneficiaries in the same manner as a former family member or former key employee, and allow them to receive advice from the family office as to investments received by them or held for their benefit under the family member's Will or revocable trust.

We submit that the requirement in the Proposed Rule that the family office be "wholly owned and controlled (directly or indirectly) by family members" unnecessarily limits the range of structures that family members would be able to use. First, the Proposed Rule eliminates the ability of a family office to be owned by trusts for the primary benefit of family members, which may be done for estate planning or continuity purposes. Second, some family offices are owned by the employees of a family entity or operated within a family business, but that does not mean that the office is not operated primarily for the benefit of a single family. We suggest that language similar to that proposed by the Coalition be adopted so that the ownership and control requirement be defined as follows: "any company that is operated primarily for the benefit of family clients and is either owned by or subject to the control of any one or more family clients." In that way, family members, as well as key employees, family trusts and family entities, could be included as part of the ownership or control structure.

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6. Conclusion.

We recognize the difficult task faced by the Commission in preparing a definition of a family office to adequately reflect the wide range of structures of true single family offices and distinguish them from offices that serve multiple families and operate in a commercial manner. We hope that the Commission recognizes that the suggestions made herein and in the letter submitted on behalf of the Coalition are merely attempting to broaden the Commission's understanding that there is an array of family offices not covered by the Proposed Rule.

Thank you for your consideration of these comments.

Very truly yours,



Carleen L. Schreder

CLS:mhl

Exhibit A

(d) *Definitions.* For purposes of this section:

(1) *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of being an officer of such company.

(2) *Family client* means:

(i) Any family member;

(ii) Any key employee;

(iii) Any family entity;

(iv) Any family trust;

(v) The estate of a deceased, minor or disabled family member or former family member;

(vi) Any former family member, provided that from and after becoming a former family member the individual shall not receive investment advice from the family office (or invest additional assets with a family trust or family entity) other than 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, except that a former family member shall be permitted to receive investment advice from the family office with respect to additional investments that the former family member was contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the person became a former family member; or

(vii) Any former key employee, provided that upon the end of such individual's employment by the family office or other family entity, the former key

employee shall not receive investment advice from the family office (or invest additional assets with a family trust or family entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the end of such individual's employment, except that a former key employee shall be permitted to receive investment advice from the family office with respect to additional investments that the former key employee was contractually obligated to make, and that relate to a family-office advised investment existing, in each case prior to the time the person became a former key employee.

(3) *Family entity* means:

(i) Any charitable foundation, charitable organization, or charitable trust, in each case substantially funded by one or more family members (including deceased family members), former family members, existing or terminated family trusts or other existing or terminated family entities (including other charitable foundations, charitable organizations, or charitable trusts) or controlled (directly or indirectly) by one or more family members; and

(ii) Any limited liability company, partnership, corporation, or other entity controlled (directly or indirectly) and substantially owned (directly or indirectly) by one or more family clients; provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of "investment company" under the Investment Company Act of 1940.

For these purposes, "substantially owned" means ownership of eighty percent (80%) or more of the equity interests in an entity.

(4) *Family member* means:

(i) the founders, the spouse or spousal equivalent at any time of any founder, the lineal descendants of any founder and of the spouse or spousal equivalent of any

founder (including by adoption and stepchildren), such lineal descendants' parent who is not otherwise a founder or a spouse or spousal equivalent of a founder, and such lineal descendants' spouses or spousal equivalents; and

(ii) the identifiable ancestors of any founder and the identifiable ancestors of the spouse or spousal equivalent of any founder, the siblings of such ancestors (including half siblings), such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents.

(5) *Family trust* means:

(i) any revocable trust created by a family member and held, during lifetime, for the primary benefit of such family member or other family members, both for such family member's lifetime and during a reasonable period of administration after the death of such person; and

(ii) any irrevocable trust held for the primary benefit of one or more family members, former family members, key employees, former key employees or family entities.

(6) *Former family member* means a person who is defined as a family member by being a spouse, spousal equivalent, or by reason of his or her relationship to a spouse or spousal equivalent (but not including a stepchild), but is no longer a family member due to a divorce or other similar event. A person shall continue to be considered as a spouse or spousal equivalent if he or she had such status at the time of his or her death or the death of the person with whom the spouse or spousal relationship existed.

(7) *Founders* means the natural person or persons, whether deceased or living, for whose benefit the family office was originally established, as long as, if there are multiple such persons, such persons have at least one common ancestor or such persons are the spouse or spousal equivalent of each other.

(8) *Key employee* means any natural person (including any person who holds a joint, community property, or other similar shared ownership interest with that person's spouse or spousal equivalent) who is (a) an executive officer, director, trustee, general partner, or person serving in a similar capacity of the family office, family trust or of any family entity or (b) any employee of the family office or of any family entity (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the family office) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office, family trust or other family entity. As the context permits, it also means a trust created by a key employee for the primary benefit of said employee, his or her spouse or spousal equivalent, his or her lineal descendants (including by adoption and step children) and such lineal descendants' spouse or spousal equivalents.

(9) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse or any person recognized as a spouse or spousal equivalent under the laws of the State in which such person resides or which is otherwise applicable to such relationship.