MCAFEE&TAFT
A PROFESSIONAL CORPORATION

10TH FLOOR • TWO LEADERSHIP SQUARE
211 NORTH ROBINSON • OKLAHOMA CITY, OK 73102-7103
(405) 235-9621 • FAX (405) 235-0439
www.mcafeetaft.com

PHILIP B. SEARS
ATTORNEY AT LAW

WRITER DIRECT
(405) 552-2288
FAX (405) 228-7488
phil.sears@mcafeetaft.com

November 18, 2010

VIA EMAIL: RULE-COMMENTS@SEC.GOV

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Proposed Rule: Family Offices
Release No. IA-3098
File Number: S7-25-10

Dear Ms. Murphy:

This letter is in response to the request of the Securities and Exchange Commission (the "Commission") for comments on Rule 202(a)(11)(G)-1 Family Offices (the "Proposed Rule"), which would define the term "family offices" that would be excluded from the definition of an "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act") and therefore would not be subject to any of the provisions of the Advisers Act as set forth in Release No. IA-3098 dated October 12, 2010 (the "Release").

As we represent a number of clients who would be affected by the adoption of the Proposed Rule, we appreciate the opportunity to provide comments on it.

GENERAL COMMENT

We are appreciative of the Commission's thoughtful approach to crafting a rule of general applicability that defines the term "family offices" within the mandates given the Commission in Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). However, we are very concerned that certain aspects of the Proposed Rule are unduly restrictive and may have unintended and adverse effects on entities historically considered family offices that neither meet a strict interpretation of the definition of a "family office" set forth in the Proposed Rule nor fall within the class of persons Congress intended to bring under the regulation of the Commission when it adopted the Dodd-Frank Act.

SPECIFIC COMMENTS

We note that the Commission has received many thoughtful, well written comment letters with respect to the Proposed Rule. Many of those comment letters, such as those of Martin Lybecker of Perkins Coie on behalf of The Private Investor Coalition, Inc. (the "Coalition"), the analysis, positions and suggestions in which we strongly support, provide the Commission with practical examples of the many uncertainties associated with the Proposed Rule and the many unintended and adverse effects that the Proposed Rule would have on entities historically considered family offices. Our comments in this letter focus on specific provisions of the Proposed Rule that we see as raising additional issues for entities that historically have been considered family offices and that have relied on the 15-client exemption currently contained in Section 203(b)(3) of the Advisers Act, which will be repealed by Section 403 of the Dodd-Frank Act, effective July 21, 2011. Our comments follow the order of the text of the Proposed Rule itself rather than the order in which topics were raised in the narrative portions of the Release.

1. "Family office" as a company

Section 202(a)(11)(G)-1(b) begins the definition of the term "family office" with the words, "A family office is a company . . . ." Although Section 202(a)(5) of the Advisers Act uses expansive language to define the term "company", we are concerned that the term could be interpreted as excluding a single individual who is acting alone. We submit there are many instances in which an individual acting alone should be regarded as the equivalent of a "family office" for purposes of the Proposed Rule.

For instance, an individual family member (e.g., a patriarch or matriarch) who manages assets for other family members either in his or her own name, or as a manager of a limited liability company that serves as a family investment vehicle, or as an attorney-in-fact pursuant to a valid power of attorney, might not satisfy the definition of a "company" and therefore would fall outside the scope of this exemption despite the fact that the persons who might be regarded as the "clients" of such individual are limited to fifteen (15) or fewer "family members", as that term is defined in the Proposed Rule.

Similarly, some families rely upon a trusted non-family member who is an employee in an operating business or private company that is exclusively or predominately owned and/or controlled by members of a single family to perform some of these same functions for family investment vehicles. Again, even where family members are the sole owners of the investment entity and the non-family member manager was selected, and is controlled directly, by family members, the fact that the trusted non-family member is an individual may cause him or her to fall outside the scope of the Proposed Rule as presently drafted.

We respectfully request that the Commission revise the definition of "family office" to include individual family members. We additionally request that the Commission revise the definition of "family office" also to include a non-family member who (i) has no clients other than family clients, (ii) is employed by a company that is owned or controlled (directly or indirectly) by family members, and (iii) does not hold himself or herself out to the public as an investment adviser.

2. Involuntary transfer to a person other than a "family client"

Several comments have been submitted concerning the challenges presented by involuntary transfers. We agree with the Coalition's observation that a family office would be presented a Hobson's choice if the time period within which the interest of a non-family client must be redeemed were to begin before it was legally possible to effect such a transfer. Accordingly, we join in support of the Coalition's recommendation that a family office should not be required to exclude a non-family client until it is both legally and practically feasible to do so and that in any event such period of time would be deemed to extend at least one year.

3. Ownership and Control of the "family office" solely by "family members"

We note that the comments of several others have raised concerns regarding the joint requirement in Section 202(a)(11)(G)-1(b)(2) that the family office be both wholly owned and controlled by a class of persons limited to family members. We join with those who have suggested that the intent of the rule would be served more fully, without any adverse affect on the public, if Section 202(a)(11)(G)-1(b) were revised to encompass family offices that are formed by, or are primarily for the benefit of, or are subject to the control of, permissible family clients.

4. Charitable entities and organizations

We join in support of the Coalition's recommendation that Section 202(a)(11)(G)-1(d)(2)(iii) be revised to include foundations, charitable trusts, charitable funds, and other charitable or non-profit organizations established or controlled, directly or indirectly, by one or more family clients.

5. Trusts and estates defined to qualify as a "family client"

We note the existence of divergent views in the submitted comments as to when a trust or estate exists "for the sole benefit of one or more family clients" as required in Section 202(a)(11)(G)-1(d)(2)(iv) of the Proposed Rule. We likewise agree with and join in support of those who have recommended that the sole test of whether a trust is a permissible family client should be determined on the basis of whether the persons currently recognized by the trust as either an income beneficiary or as entitled to enjoy the use of trust property are, at that time, each a permissible family client.

6. Pooled Investment Vehicles permitted as "family clients"

We join in support of the Coalition's recommendation that Section 202(a)(11)(G)-1(d)(2)(v) be revised to include limited liability companies, partnerships, corporations and other entities that are either "owned or controlled (directly or indirectly) by one or more family clients" while eliminating the requirement that such entities be operated for the sole benefit of one or more family clients. We agree with the Commission's decision to exclude from the definition of a permissible family client any entity that is not excepted from the definition of an "investment company" under the Investment Company Act of 1940.

7. Former "family members" and "key employees"

We note that several comments have highlighted the challenges presented in determining what might constitute a "new" investment, and we agree with those who have argued there is no compelling public policy reason to restrict former family members and former key employees from making "new" investments. We also join in the Coalition's request that the Commission clarify the proposed rule to make clear that a widow or widower is included within the definition of a "family member".

8. Pension Plans and Deferred Compensation

We respectfully join in the Coalition's request that the Commission clarify in its final rule that a family office may permissibly provide investment advice to a pension plan or deferred compensation plan established for the benefit of the family office and/or other affiliated companies.

9. Founders

We note that numerous comments have been submitted concerning the proposed definition of "founder" set forth in Section 202(a)(11)(G)-1(d)(5) of the Proposed Rule. We also note the apparent lack of consensus on how this term could be more adequately and appropriately defined. Therefore, we respectfully urge the Commission to adopt the Coalition's recommendation that the term "founder" be left undefined in the final rule.

10. Key Employees

We agree with and support the recommendation of the Coalition that the Commission adopt the "knowledgeable employee" concept from Rule 205-3(d)(iii) under the Advisers Act and Rule 3c-5 under the Investment Company Act in place of the definition of "key employee" set forth in Section 202(a)(11)(G)-1(d)(6) of the Proposed Rule.

Thank you for the opportunity to submit our comments on the Proposed Rule.

Very truly yours,

Philip B. Sears