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VIA E-MAIL

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

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

Dear Ms. Murphy:

We are pleased to submit this comment letter relating to the new rule proposed by the Securities and Exchange Commission (the "SEC"), based on requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act, to define "family offices" that would be excluded from the definition of an "investment adviser" under the Investment Advisers Act of 1940 and thus would not be subject to regulation under the Investment Advisers Act.

Definition of Founder

We believe the definition of "founder" is too restrictive as currently drafted because it assumes that the family office was established for the benefit of the founder. Often a family office is established for the benefit of the founder's lineal descendants (often after the founder has passed away). So, at a minimum, the definition of "founder" should be revised to make clear that the family office need not have been established for the benefit of the founder.

Looking more closely at the definition of "founder," it appears the definition is unnecessary because the key to the family office exemption should be whether such family office is operated for the benefit of the members of a single family, and this result can be achieved without the definition. Further, by removing the definition, needless complexity would be avoided trying to address in such definition the various forms that family offices take in relation to the founder and his or her lineal descendants. As an added benefit, leaving the term "founder" undefined would allow each family office the flexibility to determine the person to be treated as the founder, the person from whom the family tree described in the definition "family member" will be populated, while preserving the single family nature of the exemption.

Definition of Family Member

We believe the definition of "family member" is too restrictive as currently drafted because it excludes as clients of a family office persons who are often included in the family office. For example, the definition excludes grandparents of a founder and the siblings of parents and grandparents of a founder, along with the spouses and lineal descendants of such parents and grandparents. The definition also appears to exclude trusts established for the principal benefit of a family member. All of the persons identified above are members of the same family, and the identified trusts are principally for the benefit of members of the same family. As all such persons and entities are related to the same family, they should be allowed to be clients of a family office, as their inclusion seems appropriate and should not harm the intent behind the exemption.

The definition also excludes as clients of a family office persons that past SEC exemptive orders have allowed to be clients of a family office. *See, for example*, In the Mater of Longview Management Group LLC, Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) (notice) and 2013 (Feb. 7, 2002) (order) (permitting the family office to advise "extended" members of the family, current and former employees of family entities and charitable entities created by family members but under the control of independent trustees). We believe that expanding the definition to include persons who would typically be considered a family member or who have historically been considered to be family members by the particular family office, such as extended family, distant relatives, and close family friends would be appropriate and not harm the intent behind the exemption.

Charitable Organizations, Family Trusts and Other Family Entities

We believe that the universe of family trusts, charitable organizations and other family entities that can be clients of a family office should be expanded. As currently drafted, the following limitations apply:

- with respect to charitable organizations, they have to have been "established and funded exclusively by one or more family members;"
- with respect to family trusts, they have to exist "for the sole benefit of one or more family clients;"
- with respect to other family entities, they have to be "wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more family clients."

So, for example, a family office would not be allowed to give investment advice to an otherwise unobjectionable trust established by a member of the family solely because a remote charitable beneficiary of the trust was a public charity, or a charity as to which members of the

family were not the exclusive donors. To broaden the universe of such entities, the definition of "family client" should be revised to include entities that incidentally or minimally benefit non-family clients and to include entities that are wholly owned *or* controlled by family clients. It should also be broadened to include a trust that has a non-family member as a remote contingent beneficiary.

Ownership and Control of the Family Office

We believe that the condition requiring that the family office be wholly owned and controlled by family members is too restrictive. For example, the definition of "family office" should be expanded to include companies that are wholly owned and controlled (directly or indirectly) not only by family members, but also by any trust existing for the benefit of one or more family clients, even if one or more of the trustees is independent. *See, for example,* In the Matter of Moreland Management Company, Investment Advisers Act Release Nos. 1700 (Feb. 12, 1998) 63 Fed. Reg. 8710 (Feb. 20, 1998) (notice) and 1706 (Mar. 10, 1998) (order). We believe that broadening the definition in this manner would be appropriate.

In the rule release, the SEC notes that the condition requiring that the family office be wholly owned and controlled by family members "assures that the family is in a position to protect its own interests and thus is less likely to need the protection of the federal securities laws." We believe that expanding the universe of possible owners of a family as noted above would not impair the family members' ability to protect their own interests.

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We would be happy to discuss any questions that the staff may have regarding the above comments. Please call Peter D. Fetzer at (414) 297-5596 if you have any questions.

Sincerely,

Foley & Lardner LLP

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