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November 29, 2009

VIA ELECTRONIC TRANSMISSION

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Investment Advisers Act Release No. 3098 (File No. S7-25-10): Family Offices

Dear Ms. Murphy:

We respectfully submit this letter in response to a request by the Securities and Exchange Commission ("Commission") for comments regarding proposed rule 202(a)(11)(G)-1 ("Proposed Rule" or "Rule") under the Investment Advisers Act of 1940, as amended ("Advisers Act"), relating to the definition of family offices.[1]

Dechert LLP is an international law firm with a wide-ranging financial services practice that serves clients in the United States and worldwide. In the United States, our clients include, among other entities, registered and unregistered investment advisers of all sizes that provide investment advice to registered investment companies, private funds and family offices. Although we have discussed the matters addressed in the Proposed Rule with some of our clients, the comments that follow reflect our views and not necessarily the views our clients.

While we generally agree with the Commission's approach, we urge the Commission to avoid adopting unnecessarily restrictive definitions that fail to account for the different types of family offices that are within the Congressional intent of section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Taking an expansive view can reduce the need for exemptive relief going forward, while still assuring that no persons improperly avoid registration under the Advisers Act by claiming to be a family office.

[1] *See Proposed Rule: Family Offices*, Rel. No. IA-3098 (Oct. 12, 2010) ("Proposing Release").

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I. The Definition of Family Members

Founders

We recommend that the Commission consider expanding the definition of "founder" in order to take into account the fact that the founder of a family office is not necessarily the founder of the family wealth.[2] As currently drafted, the Proposed Rule assumes that the founder of a family office is the individual who created the family wealth. In fact, family offices are quite often established by a descendent of the individual(s) who created the family wealth. Families should be granted the latitude to determine which family member shall serve as the common ancestor reference point from which to measure appropriate family relationships under the Rule, and to encompass each desired member of the family unit regardless of when or for whose benefit the family office was established. The Rule should allow the family office to determine whether (a) the individual(s) responsible for creating the family wealth, (b) a lineal descendant of one or more of the individual(s) responsible for creating the family wealth, or (c) a common ancestor of the individual(s) responsible for creating the family wealth should serve as the "founder" of the family office for purposes of measuring which familial relationships will constitute "family members" under the Rule.

Allowing for flexibility in determining which family member serves as the "founder" of the family office would also allow a more appropriate definition of "family member." In instances where the founder of a family office is a descendent of the founder of the family wealth, the term "family member" should encompass individuals, parents, grandparents, and siblings of each such person (*i.e.*, such individual's aunts and uncles, and great aunts and great uncles, and their spouses and children). Such persons are clearly within the "family circle", and taking a more expansive approach when determining who is considered a "family member" would be consistent with the public policy behind the Rule.

Widowed Spouse

While we believe the intent of the Commission in the Proposing Release is to include widowed spouses in the definition of "family member," we would appreciate the confirmation of such fact in the adopting release of the Rule.

We do not believe it was the Commission's intent to exclude widowed spouses from the definition of a "family member"; however, given the distinction between the definition of "family member" and "former family member," it is unclear whether the death of a spouse by whom the connection to the founder is created would sever the

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[2] *See* Proposed Rule 202(a)(11)(G)-1(d)(5).

familial tie and force the widowed spouse to be classified as a "former family member" because he or she "was a family member but is no longer a family member due to a divorce or other similar event."[3] The Proposed Rule intends for the members of the family for whose benefit the family office was established to be protected. Widowed spouses are clearly intended beneficiaries and therefore the Proposed Rule should protect their ability to receive investment advice from the family office.[4]

Foster Children

We recommend the Commission clarify that, in addition to adopted children and stepchildren, foster children are included in the definition of "family member" by virtue of such child's relationship with its foster parents. In many circumstances the relationship with a foster child rises to the familial bond established with one's own children, whether biological or adopted. Under the Proposed Rule, if a foster child who had not been legally adopted were the beneficiary of a trust established by his foster parents or participated in investments managed by his foster parents' family office, the family office would be precluding from advising the trust or the foster child because the foster child is not included in the definition of a "family member."

II. The Definition of Family Clients

We recommend expanding the definition of "family client" as it relates to trusts, estates and charitable entities to include estate planning vehicles and charitable structures not currently contemplated in the Proposed Rule. Many estate planning vehicles and charitable entities are structured as such for tax reasons and would be difficult to unwind or change their structure, thereby precluding them from receiving advice from a family office that wishes to rely on the Rule.

Family offices currently provide advice to trusts that have as beneficiaries charitable entities and/or estate planning vehicles organized or operated in a variety of manners not necessarily "established and funded exclusively by family members or former family members"[5] or "established for the sole benefit of family clients."[6] For instance, these definitions of a "family client" in the Proposed Rule would not allow a trust to be a family client if it is established as a charitable remainder trusts. Trusts are often established as charitable remainder trusts for the purpose of bifurcating the income and principal amount of a trust, where the named beneficiaries receive the income and

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[3] Proposed Rule 202(a)(11)(G)-1(d)(4).

[4] We believe this rationale is the same for orphans. While the definition of "family member" does not explicitly state that orphans remain family members, we understand that if a child is a lineal descendant of a founder, the child would remain a lineal descendant even if his or her parents passed away and the child became an orphan

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

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

a charitable organization not necessarily established or exclusively funded by a family member receives the principal after a specified period of time. A family office should not be precluded from providing advice to such a trust for the benefit of family members simply because the remainder is donated to a charity not necessarily established or exclusively funded by a family member.

In addition, there are often circumstances where family offices are providing advice to a trust established for family members but that also names a public (or similar) charity as a potential beneficiary. We believe such charities should be a permissible distributee of the trust without affecting a family office's compliance with the Rule in circumstances where (a) the charity did not contribute any amounts to the trust and (b) the charity has no reasonable expectation to look to the family office for investment advise solely by reason of being named as a beneficiary to a trust.

III. Ownership Structure of a Family Office

Generating Profits

We agree with the Commission's approach in the Proposed Rule to not mandate a family office be operated on an "at-cost" basis and allow a family office to generate profits for its owners. We believe families should have the freedom to structure businesses in a manner that they find appropriate given their particular circumstances. Allowing a family to structure their family office to generate profits would not turn a family office into a "family-run" investment advisory business, as is the Commission's stated concern in the Proposing Release, because a family office is still only able to provide advice to "family clients", and therefore such a prohibition serves no legitimate purpose under the Advisers Act. Allowing family offices to be excluded from the provisions of the Advisers Act is based on the notion that the family office is being operated for the benefit of the members of a family. Eliminating ownership and structuring requirements from the Rule does not affect the fact that a family office must still be operated solely for the benefit family members.

Key Employees Ownership

We recommend the Proposed Rule be amended to allow "key employees" to maintain a small ownership interest in the family office. The Proposed Rule currently requires that a family office be wholly owned and controlled (directly or indirectly)[7] by family members in order to maintain the distinction between family offices and "family-run" offices or other commercial investment advisers.[8]

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[7] Presumably, the inclusion of the phrase "indirectly" evidences varying methods through which a family member may hold an interest in a family office, including if such interest is held in a trust for the benefit of a family member.

[8] Proposed Rule 202(a)(11)(G)-1(b)(2).

The Proposed Rule allows key employees of a family office to be deemed "family clients" in order to be eligible to receive investment advice from and participate in investment opportunities provided by a family office.[9] As the Proposing Release states: "[P]ermitting participation by key employees allows…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] This same rationale allowing for key employees to be clients of a family office should be extended to allow key employees to maintain an ownership interest in family offices.

Permitting key employees the opportunity to take a small ownership interest will allow family offices to attract and retain the most talented employees. At other investment advisory firms, highly successful investment professionals are often promoted to positions in which they may share in the profits generated by a firm or are compensated with generous bonus packages dependent on the firm's profits. Allowing key employees to own a small interest in a family office, or in the very least allowing key employees to share in the profits of a family office, will allow family offices to compete with other investment advisory firms in attracting and retaining successful investment personnel.

Further, allowing key employees to share in the profits generated by a family office would be a measure towards "better aligning the interests of such persons with those of the family members served by the family office."[11] If the Commission decides to regulate the ownership structure of a family office, limiting ownership stakes of key employees to a small percentage assures that the family members would maintain primary control of the family office and still be able to protect their own interests, while ensuring that the investment personnel's interests are aligned with those of the families.

IV. Involuntary Transfers

We believe the Commission should consider extending the current four-month grace period[12] after an involuntary transfer to a two-year period in order to accommodate the varying degrees of liquidity associated with certain assets of a family client or the potential for complicated estate administration upon a family client's death. We do not believe four months would provide family offices with enough time for an orderly transition of assets without significant adverse consequences to the transfer recipient. Extending the four-month grace period would eliminate such unnecessary adverse

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

[10] Proposing Release at 18.

[11] Id. at 19.

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

consequences while avoiding the Commission's concern of a family office providing investment advice to several non-family clients after multiple involuntary transfers.

V. Holding Out

We recommend the Commission clarify in the adopting release that a family office that is currently registered as an investment adviser and expects to de-register in reliance on the Rule will not be prohibited from relying on the Rule based on previously holding itself out as an investment adviser.

VI. Shared Family Office

We also endorse the view articulated in the comment letter submitted to the Commission by Allen B. Levithan, Member of Lowenstein Sandler PC on November 12, 2010 in respect of the request to expand the Proposed Rule to include "shared-family offices" where multiple unrelated natural persons may serve as founders to one family office, such that the family office is operated for the benefit of the family members of each founder.

A family office comprised of not more than three families, controlled by such families and serving only family clients of such families, does not resemble a "family-run" office engaged in commercial investment advisory activities. The family clients of the two or three families of a shared-family office have no more need for the investor protections of the Advisers Act than the family members of a single family office. As there currently exist shared family offices formed by unrelated founders, typically as a result of preexisting relationships between the founders, exempting such shared-family offices will allow the Commission to preempt the need for such families to apply for exemptive relief without compromising the policies underlying the Proposed Rule.

VII.Effectiveness of Rule

The Proposing Release acknowledges that family offices that previously registered with the Commission as investment advisers and that meet the components of the Proposed Rule would be able to de-register from the Commission in reliance on the Proposed Rule and be excluded from the requirements of the Advisers Act.[13]

On July 28, 2010, the Commission adopted amendments to Form ADV and related brochure filing and delivery requirements applicable to registered investment advisers ("Form ADV Amendments").[14] The Form ADV Amendments will require each existing registered investment adviser whose fiscal year ends on or after December 31, 2010 to file an amended Form ADV and a new narrative brochure in its next annual

[13] Proposing Release at 31.

[14] *See Final Rule: Amendments to Form ADV*, Rel. No. IA-3020 (July 28, 2010).

updating amendment. If a family office whose fiscal year ends on December 31 is registered with the Commission, it would be required to file an amended Form ADV and a narrative brochure within ninety days of the fiscal year end (*i.e.*, April 1). If the Proposed Rule exempting family offices from the provisions of the Advisers Act is not effective by April 1, 2011, a family office that intends to de-register will incur the cost of revising its Form ADV and adding the narrative brochure as prescribed by the Form ADV Amendments.[15] We ask that the Commission consider issuing no-action guidance or clarifying in the adopting release that those family offices intending to de-register from the Commission upon the effectiveness of the Proposed Rule are exempt from filing a Form ADV annual updating amendment in 2011.

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We very much appreciate the opportunity to submit comments on the Proposed Rule. If the Commission or its staff wishes to discuss the matters mentioned in this letter, please contact George J. Mazin at 212.698.3570, Michael L. Sherman at 202.261.3449 or Alpa Patel at 202.261.3346.

Very truly yours,

/s/ Dechert LLP

[15] The Commission estimated the cost for legal services related to preparation of Part 2 of Form ADV would be $3,200 for small advisers. Id. at 84.