Schulte Roth&Zabel LLP

919 Third Avenue
New York, NY 10022
212.756.2000
212.593.5955 fax

www.srz.com

Jason S. Kaplan
212.756.2760

Writer's E-mail Address
jason.kaplan@srz.com

December 8, 2010

Elizabeth M. Murphy, Esq.
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1009

Re: Proposed Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940
File Number S7-25-10

Dear Ms. Murphy:

We are pleased to submit this letter in response to the request by the U.S. Securities and Exchange Commission (the "Commission") for comments on proposed Rule 202(a)(11)(G)-1 (the "Proposed Rule") under the Investment Advisers Act of 1940 (the "Advisers Act"), which would define "family offices" for the purposes of excluding them from the definition of "investment adviser" under the Advisers Act. We represent a number of family offices in various matters related to securities law, tax and estate planning. We are submitting this comment letter on behalf of a single family office client to express its views with respect to several issues raised in the Proposed Rule regarding "key employees."

While our client strongly supports the inclusion of "key employees" in the definition of "family members" for the purpose of the Proposed Rule, in its view, the proposed definition unnecessarily restricts who will qualify as a "key employee." Our client is a multi-billion dollar family office that has been in existence over 10 years and has first-hand knowledge of the importance of co-investing as a recruiting and retention tool for "key employees."

The Proposed Rule defines the term "key employee" as follows:

> *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 an executive officer, director, trustee, general partner, or person serving in similar capacity of the family office or any employee of the family office (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, provided that such employee has been performing such functions and duties for or on behalf of the family office, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.

The Commission, in the release to the Proposed Rule, posed a number of questions relating to key employees. The following represents our client's thoughts on those questions.

1. **Should we permit key employees to receive investment advice through the family office**? Yes. It is important not only in terms of attracting talented investment professionals (as discussed in more detail below), but it is also very important in terms of ensuring the proper alignment of interests between the family members and the key employees. Although individuals who are hired by family offices are expected to operate with a high level of integrity, co-investment provides a great litmus test or "truth serum" for potential new investments. An investment professional who has significant reservations about a potential investment by the family office will be more likely to voice those concerns if he or she is required or expected to invest alongside the family members in the investment. In addition, there is no reason why investment professionals should not share in the gains of successful investments through their equity investment (and share in the losses on unsuccessful investments) if they are willing to put their capital at risk alongside the family members.

2. **Do family offices rely on allowing co-investment to attract talented investment professionals to work at the family office?** Yes. There is no question that family offices increasingly rely on allowing co-investment to attract talented investment professionals to work at the family office. As family offices become increasingly sophisticated in their investment operations, they are competing to recruit from the same pool of talent with hedge funds, private equity funds and other asset managers. Absent the ability to continue to offer co-investment opportunities to investment professionals and other sophisticated family office employees, family offices will be at a competitive disadvantage in terms of recruiting and retaining talented individuals.

3. **Should the definition of key employee be based on the knowledgeable employee standard in Rule 205-3 under the Advisers Act?** No, this definition is too narrow and should be expanded to include all employees who are likely to be in a position or have the level of knowledge and experience in financial matters sufficient to be able to evaluate the risks of investing with the family office. The Proposed Rule does not permit employees who are "accredited investors" under Regulation D of the Securities Act of 1933 to invest in the family office unless they otherwise meet the key employee definition. The proposed construct is too limiting and does not properly reflect the reality of the situation. Whether a person possesses sufficient knowledge or expertise to properly evaluate the risks associated with an investment should not be arbitrarily determined. It is anomalous that under the Proposed Rule, a family office employee may be able to invest in an unaffiliated private fund relying on Section 3(c)(1) of the Investment Company Act of 1940, but would not be able to co-invest in the family office where he or she is employed. In addition, in the grandfathering provision of the Dodd-Frank Act, Congress included as "clients" natural persons, who at the time of their investment, were officers, directors or employees of the family office and were accredited investors under Regulation D of the Securities Act of 1933. While the grandfathering provision was clearly aimed at a specific issue, the logic inherent in the concept should carry through to the Proposed Rule, which should be broadened to permit any family office employee who is an accredited investor to invest in the family office.

4. **Should we modify or eliminate the 12-month experience requirement for key employees? If so, how and why?** Yes, the 12-month experience requirement should be eliminated in its entirety. It is not clear that the 12-month waiting period is necessary to achieve the Commission's objectives in promulgating the Proposed Rule. Someone who is deemed to be a key employee is in fact a key employee; adding a 12-month waiting period does not further any valid policy interest. There are many avenues that a person can take to gain sufficient knowledge or expertise to properly evaluate an investment other than through the proposed 12-month experience requirement.

5. **Should we allow former key employees to retain their investments through the family office at the time of termination?** Yes, former key employees should not be forced to liquidate their investments previously made through the family office at the time of the termination of their employment. There are a number of reasons for this – including potential adverse tax issues, valuation issues related to illiquid securities and adverse investment consequences – all of which point towards permitting former employees to retain their investments following the termination of their employment. Former employees should not be able to make new investments, but to permit them to stay invested (or, rather, to permit the family office to have a structure that requires them to stay invested until there is a liquidity event for all family office investors) is in keeping with the alignment of interests concept that is so key to the family office dynamic.

Thank you in advance for considering these comments.

Sincerely,

Jason Kaplan