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November 10, 2010

Via email (rule-comments@sec.gov)

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

RE: SEC File No. S7-25-10
Release No. IA-3098
Proposed Rule under Investment Advisers Act
"Family Offices"

Ladies and Gentlemen:

On behalf of our client, The Crane Family Office, we are pleased to submit this comment letter concerning the above-referenced release issued by the Securities and Exchange Commission. The rule proposed by the release would define "family offices" as exempt from registration under the Investment Advisers Act of 1940. After reviewing the release, we urge the Commission to adopt the revisions we have outlined below.

We support the inclusion of stepchildren, spousal equivalents, parents of the family office's founders, and siblings of the founders (and their respective family members) as "family members" whom family offices are permitted to have as investment advisory clients. This inclusive definition of "family members" recognizes that these individuals are likely to have close family ties to the founders, and allows the founders to define their family in their discretion in privacy, which the Commission notes is a goal of the rule.

In the interest of maintaining such privacy and discretion, we believe an inclusive definition of family members should extend to former family members as well. We support permitting former family members, *i.e.*, former spouses, spousal equivalents, and stepchildren, to retain any investments held through the family office at the time they became a former family member, and we propose they be permitted to make new investments through the family office as well.

Depending upon family dynamics, family members who are defined or deemed to be "former" as a legal matter are often still considered active and welcomed members of the family controlling the family office as a practical matter. For example, if a founder has a spouse with children from a prior relationship, and the founder and spouse subsequently divorce, the children may still be considered members of the family controlling the office and should receive the benefit of new investments in the founder's discretion. Given the Commission's proposed broad definition of "family member" to include key employees, the spouses of the founder's siblings, and their lineal descendants, it is conceivable that a former family member, such as a former spouse, may be as equally integrated into the family as a defined "family member," despite divorce or other manner of legal separation. The purposes of registration under the Advisers Act are not served by denying a former spouse or former stepchildren the benefits of the family office should the founder desire to continue such benefits.

We propose a definition of "family member" that would include any former family member if at any time they met the Commission's definition of "family member." Inclusion of these so-called former family members will still be at the discretion of the founder, and such a definition would allow the Commission to avoid crafting language that attempts to discern when founders consider individuals to no longer be family members, which often has nothing to do with legal distinctions. Just as a founder is free to exclude a family member from a family office, the founder should be free to include an individual that for all intents and purposes is a "family member," and indeed at one time met the Commission's definition of "family member."

Similarly, we support allowing former key employees to retain any investments held through the family office at the time they became a former key employee, and we propose they be permitted to make new investments through the family office as well. Given the requirements of the Commission's proposed definition of "key employee," it is unlikely that allowing a former key employee to continue to receive the benefits of a family office, in the discretion of the founder, would subvert the intentions of the Advisers Act. We rely on allowing co-investment to attract talented investment professionals to work at the family office, and it is conceivable that we would want to continue such co-investment for a former key employee.

We support treating as a "family client" any trust or estate which (i) is created by one or more family members, (ii) is funded exclusively with assets of one or more qualifying family members, and (iii) whose current beneficiaries are family members. Depending upon circumstances, it is not uncommon for family members to create trusts for themselves, such as in the case of revocable living trusts, or for one family member to create a trust or make a testamentary bequest in trust for another family member, such as in the case of life insurance trusts or marital trusts created for spouses of family members. When a qualifying trust or estate must be exclusively created by, funded by and for the benefit of family members, we believe it is unlikely that allowing any such trust or estate to receive the benefits of a family office, in the discretion of the founder, would subvert the intentions of the Advisers Act, particularly since family members creating such trusts or estates could qualify as family clients and avail themselves of family office service directly had they not formed such entities.

We support treating as a "family client" any trust or estate which (i) is created by one or more family members, (ii) is funded exclusively with assets of one or more qualifying family members, and (iii) has at least one current beneficiary that is a person, entity, etc., that has a relationship with the family office but that is not a "family member." Depending upon circumstances, it is not uncommon for family members to create a trust or make a testamentary bequest in trust for a favored individual who may not qualify as a family member, such as a trust or testamentary bequest created or made for the benefit of a beloved friend or one in which such friend is a current beneficiary along with family members. Given our proposed requirement that a qualifying trust or estate with a non-family member beneficiary must be funded exclusively by and with assets from one or more qualifying family members, we believe it is unlikely that allowing any such trust or estate to receive the benefits of a family office, in the discretion of the founder, would subvert the intentions of the Advisers Act.

In the absence of a complete exemption for trusts and estates that have as a current beneficiary a person, entity, etc. that has a relationship with the family office but that is not a "family member," we propose allowing the family office to provide services to such trusts and estates so long as the assets managed do not exceed a specific percentage relative to the total assets managed by the family office, as set by the Commission. We propose an initial five percent threshold. We believe that such a *de minimis* exception for non-family "family clients" would allow family offices to benefit individuals, trusts, and organizations that are integrated with the family despite not meeting a strict traditional definition of "family client," without harming the intended beneficiaries of the Advisers Act.

We support treating as a "family client" any trust which is created exclusively for the benefit of one or more family members, regardless of the source of funding for such trust or identity or status of the trust settlor (i.e., the person, entity, etc. responsible for creating the trust). In the case of family clients who are minors or who may be mentally or physically impaired and who receive awards from third parties as damage, maintenance or support awards or compensation, it may be necessary to place these funds in trust. Given the requirement that a qualifying trust be created exclusively for the family member who would qualify as a family client, we believe it is unlikely that allowing any such trust to receive the benefits of a family office, in the discretion of the founder, would subvert the intentions of the Advisers Act, particularly since the beneficiaries of such trusts could avail themselves of family office services had the assets of such trusts been transferred directly to the beneficiaries as opposed to being placed in trust.

We support treating as a "family client" any charitable foundation, charitable organization or charitable trust established and funded by one or more family members. Given the requirement that this proposed exemption extend only to charitable endeavors, it is unlikely that allowing any such charitable foundation, charitable organization or charitable trust to receive the benefits of a family office, in the discretion of the founder, would subvert the intentions of the Advisers Act. In the absence of a complete exemption for charitable foundations, charitable organizations or charitable trusts established and funded by one or more family members, we propose allowing the family office to provide services to such charitable organization, etc., that has a relationship with the family office but that is not a "family member" or organized exclusively by "family members," so long as the assets managed do not exceed a specific percentage relative to the total assets managed by the family office, as set by the Commission. As stated above, we propose an initial five percent threshold. We believe that such a *de minimis* exception for non-family "family clients" would allow family offices to benefit individuals, trusts, and organizations that are integrated with the family despite not meeting a strict traditional definition of "family client," without harming the intended beneficiaries of the Advisers Act.

If the Commission chooses not to adopt a *de minimis* exception for non-family "family clients," we urge the Commission to extend the proposed four-month deadline for transitioning assets of a non-family member following an involuntary transfer. Due to the complexities of estates managed and settled by a traditional family office, we feel five years is a more reasonable time period for transitioning assets of a non-family client following an involuntary transfer. As long as the transition must occur at some point in the future, it is unlikely that a family office would orchestrate several involuntary transfers to non-family clients in order to operate as an unregistered investment adviser.

Additionally, if the Commission is not inclined to adopt our preferred inclusion of former family members and former key employees as acceptable family office clientele, we urge the Commission to adopt a *de minimis* exception that would allow the family office to provide services and manage assets for such individuals not to exceed a specific percentage relative to the total assets managed by the family office, as set by the Commission consistent with the intent of exempting family offices from the Advisers Act. As stated above, we propose an initial five percent threshold. We agree that as a family office extends its provision of investment advice beyond family members, it increasingly resembles a more typical commercial investment advisory business, and not a family managing its own wealth. But we believe this transformation occurs at some point well beyond *de minimis* participation by non-family individuals, trusts, charitable organizations, etc.

Finally, we ask that the Commission clarify the definition and concept of "founders" of a family office to confirm that the term includes more than just one initial couple for whose benefit the family office was established. For example, the Crane Family Office was founded by eight third-generation siblings as opposed to one initial couple.

We urge the Commission to adopt as inclusive a definition of "family office" as is permitted by Congress' directive under the Dodd-Frank Act to "recognize the range of organizational, management, and employment structures and arrangements employed by family offices." An inclusive definition will avoid any unnecessary intrusion on the privacy and discretion of families that form family offices and will allow for flexibility in an area of law where rigidity would do little to protect the investors that the Advisers Act is designed to protect. The proposed modifications of the family offices rule described above allow for a definition of "family office" that is not the sort of arrangement Congress designed the Advisers Act or the Dodd-Frank Act to regulate. For example, none of our proposed modifications would allow hedge funds to avoid registration or allow an investment adviser firm to operate under the guise of a family office. We appreciate the Commission's thoughtful approach to the definition of "family office" and urge the Commission to adopt the revisions we have outlined above.

Very truly yours,

Robert J. Tannous

cc: The Crane Family Office