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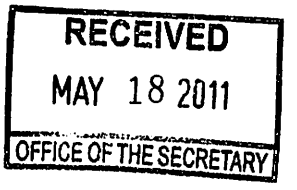
VIA FEDERAL EXPRESS



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

Re: Implementation of Section 403 of the Dodd-Frank Wall Street Reform and Consumer Protection Act: Proposed Rule 202(a)(11)(G)-1

Dear Ms. Murphy:

We represent a multi-generational, single family office that will be affected by Proposed Rule 202(a)(11)(G)-1[1] ("Proposed Rule") under the Investment Advisers Act of 1940[2] ("Advisers Act"). We are writing on behalf of such family office in response to the letter from Associate Director Robert E. Plaze to Mr. David Massey, President of the North American Securities Administrators Association, Inc. dated April 8, 2011. The family office has asked us to express its views that the Commission should extend the date by which Investment Advisers must register with the Commission as a result of the repeal by the Dodd-Frank Wall Street Reform and Consumer Protection Act[3] ("Dodd-Frank Act") of Section 203(b)(3) of the Advisers Act. The family office has also asked that we urge the Commission to adopt several of the revisions to the Proposed Rule which were suggested in the comment letters submitted to the Commission.

Congress enacted the Dodd-Frank Act, which was signed into law by the President on July 21, 2010, to be effective as of July 21, 2011. On October 12, 2010, the Commission issued the Proposed Rule and requested comments. The comment period ended on November 18, 2010, with over 90 comment letters being submitted to the Commission. The Commission has indicated that it plans to release the final rule sometime between April and July of 2011, and in his letter, Mr. Plaze stated that the Commission anticipated it will complete its rulemaking by July 21, 2011. To date, however, the Proposed Rule has not been finalized. Mr. Plaze stated that the Commission expects to extend the deadline for Investment Advisers to register until the first quarter of 2012, but no such extension has yet been released. Therefore,

[1] *See* Family Offices, Investment Advisers Act Release No. 3098 (Oct. 12, 2010), 75 Fed. Reg. 63,753 (proposed Oct. 18, 2010)(to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1).
[2] 15 U.S.C. §§ 80b-1 to 80b-21.
[3] Pub. L. No. 111-203, 124 Stat. 1376 (2010).

unless the Commission acts, family offices may well have less than two months from when the final rule is issued to determine whether or not they are exempt from registration, and therefore whether they need to register or change their operations in order to qualify under an available exemption. Such a constrained time period will likely result in rushed and ill considered actions, including unnecessary registrations, as family offices struggle to comply with the new rule. We do not believe that such a result was intended by Congress when it enacted the Dodd-Frank Act.

Further, our client believes that many family offices may not even be aware of the Proposed Rule, or may have only recently become aware of its impact. In these difficult economic times, family offices have had to initiate cut backs in order to run efficiently. This often includes limiting the family office's reliance on outside counsel. Thus, family offices may not regularly retain legal counsel who can advise them of this legislation and its impact upon their operations. Family office administrators, who do not frequently peruse the Federal Register for notice of proposed rulemaking, may not know that the enactment of the Dodd-Frank Act could have a profound impact on their operations. At a minimum, they will need to consult with counsel to analyze whether or not the Proposed Rule as finally adopted will require them to register or to alter their structure.

Our client would like to illustrate the types of issues they feel many family offices are facing by reference to their own operations as an example. Our client's family office was formed over 80 years ago, and is now providing services to the 3rd generation of descendants of the original founders of the family office. The family office has relied in the past on the private adviser exemption under section 203(b)(3) of the Advisers Act[4] to avoid registration as an Investment Adviser. As the Commission is aware, such reliance by a family office on the private adviser exemption is very common.[5] The repeal of Section 203(b)(3) of the Advisers Act would likely require the family office to register under the Advisers Act or seek an exemptive order. Therefore, the new exclusion from the Advisers Act for family offices found in section 202(a)(11)(G) is critically important for our client's family office, and many others like them.

As the Proposed Rule is currently drafted, our client would likely be required to register as an Investment Adviser. As is discussed further below, however, it is possible that they will not be required to register under the final rule.

1. Definition of Family Clients

The Proposed Rule's definition of family clients includes family members, trusts for the benefit of family members and business entities owned and controlled by family members. In addition to these classes of clients, our client's family office includes several

[4] 15 U.S.C. § 80b-3(b)(3)(registration not required for "any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients . . .")

[5] *See* Family Offices, Investment Advisers Act Release No. 3098 (Oct. 12, 2010), 75 Fed. Reg. at 63,754 ("We understand that many family offices have been structured to take advantage of the exemption from registration under section 203(b)(3) of the Advisers Act for any adviser that during the course of the preceding 12 months had fewer than 15 clients . . .")

clients who are widows or widowers of descendants of the founders. Whether these widows and widowers would be treated as family members is unclear under the Proposed Rule, due to the definition of "former family member," which is defined as a spouse "that was a family member but is no longer a family member due to a divorce or other similar event." The issue, therefore, is whether a widow or widower is still considered to be a spouse of the deceased family member, or whether the widow or widower becomes a former family member due to the death of the spouse.

There is no guidance as to whether death is an event "similar" to a divorce as there is no discussion in either the Proposed Rule or Investment Advisers Act Release No. 3098 regarding how a widow or widower will be treated. Therefore, a definitive answer as to whether or not our client's family office has only family clients cannot be provided based upon the Proposed Rule. Many of the comment letters submitted to the Commission regarding the Proposed Rule have requested that the Commission address this issue and specifically provide that a widow or widower is considered to be a family member in the final rule.[6] Our client strongly urges the Commission to adopt such clarifying language. If the Commission does so, then our client believes that they will meet the requirement of having only family clients. That determination, however, will have to await the release of the final rule.

2. Ownership and Control

Under the Proposed Rule, a family office must be wholly owned and controlled, either directly or indirectly, by family members.[7] Therefore, only family members may have an ownership interest in the family office, and it appears that the Board of Directors and Officers must be "wholly" family members. Trusts for the benefit of family members are owners of our client's family office, and individuals who would not fall within the definition of family members serve as Directors or Officers of the family office. Therefore, as it currently stands, our client's family office may not qualify as a family office under the Proposed Rule as it is not wholly owned and controlled by family members.

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[6] *See, e.g.* November 29, 2010 comment letter of Dechert LLP; November 18, 2010 comment letter of Edwin C. Laurenson, McDermott Will Emery LLP; November 18, 2010 comment letter of Ira I. Roxland, SNR Denton US LLP; November 18, 2010 comment letter of Philip B. Sears, McAfee & Taft; November 18, 2010 comment letter of Teri A. Lindquist, Perkins Coie; November 18, 2010 comment letter of Debra L. Stetter, Schiff Hardin LLP; November 18, 2010 comment letter of Donald D. Kozusko, Rashad Wareh, Miles Padgett, and George N. Harris, Kozusko Harris Vetter Wareh LLP; November 17, 2010 comment letter of Rufus King, Goodwin Procter LLP; November 17, 2010 comment letter of Paul T. Metzger, K & L Gates LLP; November 16, 2010 comment letter of Patricia A. Thompson, Chair, AICPA Tax Executive Committee, and Clark M. Blackman II, Chair, AICPA Personal Financial Planning Executive Committee, American Institute of Certified Public Accountants; November 16, 2010 comment letter of Timothy M. Clark, Proskauer Rose LLP; November 15, 2010 comment letter of Yolanda Chavez Knull, Vinson & Elkins; November 13, 2010 comment letter of Eugene Lipitz, CIO, Commodore Management Ltd.; November 11, 2010 comment letter of Martin E. Lybecker, Perkins Coie, on behalf of The Private Investor Coalition, Inc.

[7] Proposed Rule 202(a)(11)(G)-1(b)(2), 75 Fed. Reg. at 63,759.

The comments to the Proposed Rule have almost universally asked the Commission to expand the ownership and control test to permit de minimis ownership by non-family members and/or ownership by entities as well as individual family members so long as the entities solely benefit family members.[8] This would be in accordance with prior exemptive orders issued by the Commission.[9] Prior exemptive orders issued by the Commission have also permitted non-family members to serve on the Board of a family office, and to be Officers of a family office, so long as the majority of the Officers and Board members were family members.[10]

Based upon the analysis in these prior exemptive orders, it appears that our client's family office should be exempt from the registration requirements of the Advisers Act notwithstanding its ownership and management structure, and that it would be possible to successfully seek an exemptive order from the Commission declaring that the family office is

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[8] *See, e.g.* December 10, 2010 comment letter of Howard Dicker, Chair, Securities Regulation Committee, Business Law Section, New York State Bar Association; January 20, 2011 comment letter of Winstead PC.; November 10, 2010 comment letter of Winston & Strawn LLP; November 11, 2010 comment letter of Martin E. Lybecker, Perkins Coie, on behalf of The Private Investor Coalition, Inc.; November 12, 2010 comment letter of Allen B. Levithan, Member, Lowenstein Sandler PC.; November 12, 2010 comment letter of Michael M. Lyons, Buchanan Ingersoll & Rooney PC.; November 15, 2010 comment letter of Barbara A. Bowman, Bodman LLP, Detroit, Michigan; November 15, 2010 comment letter of James R. Clark; November 16, 2010 comment letter of Patricia A. Thompson, Chair, AICPA Tax Executive Committee, and Clark M. Blackman II, Chair, AICPA Personal Financial Planning Executive Committee, American Institute of Certified Public Accountants; November 16, 2010 comment letter of Timothy M. Clark, Proskauer Rose LLP; November 17, 2010 comment letter of Bruce A. Mackenzie, Dorsey & Whitney LLP; November 17, 2010 comment letter of David S. Guin, Head of U.S. Securities Practice Group and Christopher R. Uzpen, Co-Head of Family Office Practice Group, Withers Bergman LLP; November 17, 2010 comment letter of Kenneth J. Stuart, Becker, Glynn, Melamed, Muffly LLP; November 17, 2010 comment letter of Randal Kaltenmark, Barnes Thornburg LLP; November 17, 2010 comment letter of Rufus King, Goodwin Procter LLP; November 17, 2010 comment letter of Steven Williamson, Bessemer Securities; November 17, 2010 comment letter of Thomas D. Balliett, Kramer Levin Naftalis & Frankel LLP; November 17, 2010 comment letter of Wendell Faria, Paul, Hastings, Janofsky Walker LLP; November 18, 2010 comment letter of Alan Goldberg, K & L Gates LLP; November 18, 2010 comment letter of Christopher A. Klem, Ropes & Gray LLP; November 18, 2010 comment letter of Debra L. Stetter, Schiff Hardin LLP; November 18, 2010 comment letter of Donald D. Kozusko, Rashad Wareh, and Miles Padgett, Kozusko Harris Vetter Wareh LLP; November 18, 2010 comment letter of Foley & Lardner LLP; November 18, 2010 comment letter of Gary V. Post, The Blum Firm, P.C.; November 18, 2010 comment letter of Jeffrey W. Rubin, Chair, Committee on Federal Regulation of Securities and Alan F. Rothschild, Jr., Chair, Section of Real Property, Trust and Estate Law, American Bar Association; November 18, 2010 comment letter of John P.C. Duncan, Duncan Associates; November 18, 2010 comment letter of Larry P. Laubach, Cozen O'Connor; November 18, 2010 comment letter of Leor Landa, Paula Ryan and Jeffrey N. Schwartz, Davis Polk & Wardwell LLP; November 18, 2010 comment letter of Michele Ilene Ruiz, Sidley Austin LLP; November 18, 2010 comment letter of Philip B. Sears, McAfee & Taft; November 18, 2010 comment letter of Richard L. Dees, McDermott Will & Emery LLP; November 18, 2010 comment letter of Shearman & Sterling LLP ; November 18, 2010 comment letter of Tannenbaum Helpern Syracuse & Hirschtritt LLP; November 18, 2010 comment letter of Teri A. Lindquist, Perkins Coie; November 18, 2010 comment letter of Thomas W. Abendroth, Schiff Hardin LLP.

[9] *See, e.g.* Moreland Management Company, Investment Advisers Act Release Nos. 1700 (Feb. 12, 1998), 63 Fed. Reg. 8,710 (Feb. 20, 1998)(notice) and 1706 (Mar. 10, 1998)(order)(exemptive order granted to a family office owned by a trust of which half the trustees were family members and half were independent).

[10] *See, e.g.* WLD Enterprises, Inc., Investment Advisers Act Release Nos. 2804 (Oct. 17, 2008), 73 Fed. Reg. 63,218 (Oct. 23, 2008)(notice) and 2807 (Nov. 14, 2008)(order)(exemptive order granted to a family office with a board of directors a majority of which was composed of family members).

"not within the intent" of the definition of an Investment Adviser[11]. Under the final rule, however, whether or not some level of outside control and ownership is permitted may determine whether or not our client qualifies for the statutory exemption for a family office.

As illustrated by the foregoing examples of the issues facing family offices, the composition of the final rule will determine what course of action each family office is required to undertake. Our client is optimistic that the Commission will incorporate many of the proposals submitted in the various comment letters, such that our client ultimately will qualify as a family office under Section 202(a)(11) of the Advisers Act. Otherwise, they will be forced to undertake a massive review of their operations in order to determine whether restructuring is possible, or whether they need to register. This process would likely take at least six months, perhaps longer, and will cause our client to expend significant resources in order to ascertain their options. Therefore, our client believes it is imperative that the deadline for registering as an Investment Adviser be extended.

Congress clearly intended to exclude the typical family office from the reach of the Adviser's Act[12]. If many of the proposals put forth in the Comment Letters are incorporated into the final rule, then such intention should be realized. Every family office, however, will need to carefully examine the final rule in order to determine whether they need to register as an Investment Adviser under the Advisers Act, whether they need to seek an alternate exemption, or whether they need to restructure their operations. This will take a significant amount of time and effort. Therefore, our client respectfully urges the Commission to extend the date by which an Investment Adviser would be required to register as a result of the changes brought about by the Dodd-Frank Act.

We thank the Commission for its consideration of these matters, and its efforts in addressing the concerns of the many family offices affected by this legislation. If the Commission or its staff wishes to discuss the comments in this letter, please contact me at 302-651-7855.

Respectfully submitted,

F. Peter Conaty, Jr.

FPC:jmm

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[11] *See,* 15 U.S.C. §80b-2(a)(11)(Investment Adviser does not include "(H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.")

[12] *See* S. REP. NO. 111-176, at 75 (2010)(Conf. Rep.), stating "The Committee believes that family offices are not investment advisers intended to be subject to registration under the Advisers Act. The Advisers Act is not designed to regulate the interactions of family members, and registration would unnecessarily intrude on the privacy of the family involved."

cc: Mary L. Schapiro, Chairman
Luis A. Aguilar, Commissioner
Kathleen L. Casey, Commissioner
Troy A. Paredes, Commissioner
Elisse B. Walter, Commissioner
Ellen Rominger, Director, Division of Investment Management