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SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

APPLICATION FOR AN ORDER UNDER SECTION 202(a)(11)(H) OF THE  
INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT")  
DECLARING THE APPLICANT TO BE A  
PERSON NOT WITHIN THE INTENT OF THE ADVISERS ACT

L.R. Burtschy & Company ("LRB")  
332 East Bay Street  
Charleston, SC 29401

All communications, notices, and orders to:

Daniel G. Viola, Esq.  
c/o Sadis & Goldberg LLP  
551 Fifth Avenue, 21st Floor  
New York, NY 10176

This Application (including Exhibits) consists of 13 pages.

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

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In the Matter of )  
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 )  
 ) APPLICATION FOR AN ORDER UNDER SECTION  
 ) 202(a)(11)(H) OF INVESTMENT ADVISERS ACT OF 1940  
 ) DECLARING THE APPLICANT TO BE PERSONS NOT  
 ) WITHIN THE INTENT OF THE ADVISERS ACT  
L.R. Burtschy & Company )  
332 East Bay Street )  
Charleston, SC 29401 )  
 )  
File No. - )

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L.R. Burtschy & Company, an Ohio domiciled corporation (the "Company" or the "Applicant"), hereby files this application ("Application") for an Order of the Securities and Exchange Commission ("Commission") under Section 202(a)(11)(H) of the Investment Advisers Act of 1940 ("Advisers Act") to determine the Company to be a person not within the intent of the Advisers Act to the extent that the Company cannot satisfy all of the conditions to be a "family office" (as defined in Commission Rule 202(a)(11)(G)-1 the "Family Office Rule") under the Advisers Act if the Company were to add an additional family member client. For the reasons discussed below, the Company believes that the Order requested is fully consistent with the policies and purposes of the Advisers Act and the Family Office Rule.

**I. BACKGROUND**

**A. The Company**

The Company is a multi-generational single-family office which provides or intends to provide services to the family and descendants of John Hillenbrand ("Common Ancestor"). The Company is owned, primarily by a granddaughter, grandson-in-law and great grandson of the Common Ancestor. For purposes of this Application, the "Burtschy Family" or "Family" means and refers to the lineal descendants of Common Ancestor, their spouses or spousal equivalents, and other persons and entities that qualify as "Family Clients" as defined in paragraph (d)(4) of

the Family Office Rule. Capitalized terms used but not otherwise defined in this Application shall have the meanings assigned to such terms in the Family Office Rule.

The Company provides or intends to provide both advisory and non-advisory services (collectively, the "Services") to members of the Burtschy family. Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service."

Currently, the Company complies with all of the general conditions of the Family Office Rule for exclusion from the definition of "investment adviser" and regulation under the Advisers Act, including: (i) each of the persons served by the Company is a Family Client; (ii) the Company is otherwise owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule, and (iii) the Company does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule.

#### B. Additional Family Client

In addition to the Family Clients, the Company desires to provide Services (including Advisory Services) to the sister-in-law and brother in-law of the Common Ancestor's granddaughter (the "Additional Family Client"). The Company estimates that, if the Additional Family Client's assets were managed by the Company, the assets owned by the Additional Family Client would represent less than five percent (5%) of the Company's assets under management. The Additional Family Client does not have an ownership interest in the Company. In addition, the Company has provided services to the Additional Family Client since before 1967.

## II. REQUEST FOR AN ORDER

Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities ... "

The Company falls within the definition of an investment adviser under Section 202(a)(11) and is currently operating as such. The Family Office Rule provides an exclusion from the definition of investment adviser for which the Company is currently eligible but would no longer qualify if the Company provides Services to the Additional Family Client.

If the Company opted to render Services to the Additional Family Client, the Company would be required to register under Section 203(a) of the Advisers Act, notwithstanding that (i) the Company does not hold itself out to the public as an investment adviser, (ii) the Company is wholly owned and controlled by members of the Burtschy Family, in accordance with paragraph (b)(2) of the Family Office Rule; and (iii) the Company is a "family office" for the Burtschy family

and will not offer its Services to anyone other than Family Clients and the Additional Family Client. The Company requests that the Commission issue it an Order pursuant to Section 202(a)(11)(H) declaring it not to be a person within the intent of the Advisers Act if it renders service to the Additional Family Client.

### III. DISCUSSION

#### A. Relationship with the Additional Family Client Does Not Change the Nature of the Company to that of a Commercial Advisory Firm

The proposing release for the Family Office Rule states that in defining the term "family member," the Commission sought to distinguish between offices that serve members of a single family and those family-run offices that serve multiple families and are more commercial in nature.<sup>1</sup> However, while establishing the narrow parameters of the rule, the Commission clarified that the Advisers Act was not designed to "regulate the interactions of family members in the management of their own wealth" or apply to family offices that are "unlikely to involve commercial advisory activities."<sup>2</sup>

The Company submits that its proposed relationship with the Additional Family Client does not change the nature of the family office into that of a commercial advisory firm. The Company submits that it is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. There would only be two natural persons to whom the Company would provide Advisory Services and the remainder would all be Family Members. The Company does not believe that this will result in an overbroad application of the Family Office Rule. Therefore, the Company is requesting that the Commission declare the Additional Family Client to be a member of the Burtschy family for purposes of the Family Office Rule.

In this circumstance, a Family Member has been providing service to the Additional Family Client for many years and wishes to continue to do so. The Company also estimates that if the Additional Family Client's assets were managed by the Company, the assets owned by the Additional Family Client would represent less than one percent (5%) of the Company's assets under management.

#### B. There Is No Public Interest in Requiring the Company to Be Registered Under the Advisers Act

The Company is a private organization that was formed to provide both financial and non-financial related services to the Burtschy family. The Company's clients are comprised solely of Family Clients and, if the requested relief is granted, the Additional Family Client. The

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<sup>1</sup> Family Officer, Investment Advisers Act Release No. 3098 (Oct. 12, 2010) ("Proposing Release").

<sup>2</sup> Id; see also, Family Offices, Investment Advisers Act Release. No. 3220 ("Adopting Release")

Company's Services are exclusively tailored to the needs of the Burtschy family. The provision of Advisory Services to the Additional Family Client does not create any public interest in requiring the Company to be registered under the Advisers Act.

#### IV. PRECEDENT

The Commission issued family office exemptive orders prior to adoption of the Family Office Rule.<sup>3</sup> The Commission, however, did not rescind those orders upon adoption of the rule.<sup>4</sup> In the Adopting Release to the Family Office Rule, the Commission stated that the scope of the Family Office Rule is generally consistent with the conditions of the prior exemptive orders issued to family offices. Although those orders may be relied on only by the order recipients, they may be instructive as to future applicants on matters that were not addressed by, do not contradict, and are consistent with the policy and goals of, the Family Office Rule.<sup>5</sup> In addition, since adoption of the Family Office Rule, the Commission issued several family office exemptive orders based on applications similar to this Application. Specifically, the Company believes that the following exemptive orders issued in recent years reflect circumstances substantially similar to those of the Company:

In March 2015, the Commission issued an exemptive order to OW Investments LLC,<sup>6</sup> a family office that provided advisory services to the sister-in-law of a spouse of a lineal descendant of the family's common ancestor and to an irrevocable trust of which the sister-in-law was a beneficiary. With the exception of the irrevocable trust, the fact pattern in OW Investments LLC is almost identical to the fact pattern at issue here. Moreover, the fact pattern with respect to the Company is even less tangential in nature from the fact pattern laid out in OW Investments LLC to whom the Commission, in fact, granted an exemptive order to.

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<sup>3</sup> See, e.g., WLD Enterprises, Inc., Investment Advisers Act Release Nos. IA-2807 (Nov. 14, 2008) (Order) and IA-2804 (Oct. 17, 2008) (Notice); Parkland Management Company, L.L.C., Investment Advisers Act Release Nos. IA-2369 (Mar. 22, 2005) (Order) and IA-2362 (Feb. 24, 2005) (Notice); Longview Management Group LLC, Investment Advisers Act Release Nos. IA-2013 (Feb. 7, 2002) (Order) and IA-2008 (Jan. 3, 2002) (Notice)

<sup>4</sup> See the Adopting Release, at Section II.B.

<sup>5</sup> The Commission stated that certain issues would be more appropriately addressed through an exemptive order process than through a rule of general applicability. See the Adopting Release, at n. 34; see also Family Offices, Investment Advisers Act Release No. 3098 (Oct. 14, 2010) [75 FR 63753 (Oct. 18, 2010)], at Section II (as a rule of general applicability, the definition of family office could not match the exact representations, conditions or terms contained in every exemptive order because they varied to accommodate the particular circumstances.

<sup>6</sup> See, In the Matter of William E. Simon & Sons, LLC and New Vernon Advisors, Inc., Investment Advisers Act

In January 2015, the Commission issued an exemptive order to William E. Simon & Sons LLC and New Vernon Advisors, Inc.,<sup>7</sup> a family office that provided advisory services to the sibling of a former spouse of a lineal descendant of the family's common ancestor and a private foundation funded exclusively by the sibling. In July 2014, the Commission issued an exemptive order to Gruss & Co. Inc.,<sup>8</sup> a family office that provided advisory services to two sisters of a spouse of a lineal descendant of the family's common ancestor and each sister's respective spouse and children. In July 2014, the Commission issued an exemptive order to Duncan family office, a family office that provided advisory services to the mother-in-law of a spouse of a lineal descendant of the family's common ancestor and certain related foundations. In each of these exemptive orders, the Commission granted exemptions on facts that are comparable to the facts presented by Company in this Application, namely the ability to provide advisory services to relatives of the common ancestor who does not meet the definition of a Family Client under the Family Office Rule.

These orders recognize unique circumstances in which an entity provides advisory services to a slightly broader spectrum of individuals, but the entity remains focused on a single family's needs and its operations do not become commercial in nature. The same is true for Company, which as described above in Section I, provides services to Family Clients and desires to provide Services to one Additional Family Client whose status as clients would not change the nature of the Company's operations.

## V. PROCEDURAL MATTERS

Pursuant to Rule 0-4(f) under the Advisers Act, the Company states that its address is indicated on the first page of this Application. The Company further states that all written or oral communications concerning this Application should be directed to:

Daniel G. Viola, Esq.  
c/o Sadis & Goldberg LLP  
551 Fifth Avenue, 21st Floor  
New York, NY 10176  
Email: [dviola@sadis.com](mailto:dviola@sadis.com)  
Phone: (212) 573 - 8038

All requirements for the execution and filing of this Application on behalf of the Company have been complied with and are in accordance with the corporate bylaws of the Company, and the undersigned officer of the Company is fully authorized to execute this Application. The Company has adopted the Resolutions attached as Exhibit A authorizing the

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<sup>7</sup> Release Nos. 1A-4001 (January 20, 2015) (Order) and IA-3990 (December 22, 2014) (Notice)

<sup>8</sup> See In the Matter of Gruss & Co. Inc., Investment Advisors Act Release Nos. IA-3883 (July 29, 2014) (Order) and IA-3866 (July 1, 2014) (Notice)

filing of the application. The Verifications required by Rule 0-4(d) under the Advisers Act are attached as Exhibit B and the Proposed Notice of the proceeding initiated by the filing of this application, required by Rule 0-4(g) under the Advisers Act, is attached as Exhibit C.

## **VI. REQUEST FOR ORDER OF EXEMPTION**

For the foregoing reasons, the Company requests that the Commission issue an Order under Section 202(a)(11)(H) of the Advisers Act declaring it, and its employees acting within the scope of their employment with the Company, not to be persons within the intent of the Advisers Act, provided that the Company complies with the following conditions:

1. The Company will offer and provide Advisory Services only to Family Clients, as defined in paragraph (d)(4) of the Family Office Rule, and to the Additional Family Client, as defined above; provided however that the Additional Family Client will be deemed to be, and treated as if it was, a Family Member for purposes of paragraph (b)(1) and purposes of paragraph (d)(4)(vi) of the Family Office Rule.
2. The Company will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more members of the Burtschy family and/or family entities as defined in paragraph (d)(5) of the Family Office Rule.
3. The Company will not hold itself out to the public as an investment adviser.
4. At all times assets beneficially owned by Family Clients, as defined in the Family Office Rule, will account for at least 90% of the assets for which the Company provides Advisory Services.
5. The Company will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application. The Company submits that the Order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

Dated: May 9, 2019

**L. R. BURTSCHY & COMPANY**

By



Lawrence F. Burtschy  
President

**EXHIBIT A**

**RESOLUTIONS OF L.R. BURTSCHY & COMPANY  
AUTHORIZING APPLICATION FOR EXEMPTIVE ORDER WITH THE SEC**

WHEREAS, the President of L.R. Burtschy & Company, an Ohio domiciled corporation, deems it advisable and in the best interest of L.R. Burtschy & Company (the "Company") to submit an application with the Securities and Exchange Commission ("SEC") pursuant to Section 202(a)(11)(H) of the Investment Advisers Act of 1940 (the "Advisers Act"), or such other sections thereof or rules thereunder as may be necessary or appropriate, for an order or orders, or amended order or orders, declaring it to be a person not within the intent of the Advisers Act.

RESOLVED, that the President of the Company is authorized and directed to prepare, execute and file, or to cause to be prepared, executed and filed, with the SEC an application or applications pursuant to 202(a)(11)(H) of the Advisers Act, or such other sections thereof or rules thereunder as may be necessary or appropriate, for an order or orders, or amended order or orders, declaring it to be a person not within the intent of the Advisers Act.

RESOLVED FURTHER, that the President of the Company is authorized to take such further action, and to make such representations on behalf of the Company, in any matters relating to such application or any amendment thereto as he may approve as necessary or desirable.

IN WITNESS WHEREOF, the undersigned, Lawrence F. Burtschy, for L. R. Burtschy & Company, does hereby certify that that the foregoing resolutions were duly adopted by the Company on May 9, 2019.

Dated: May 9, 2019

**L. R. BURTSCHY & COMPANY**

By



Lawrence F. Burtschy  
President



**EXHIBIT C**

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA - ]

L.R. Burtschy & Company ; Notice of Application

[Date ]

**Agency:** Securities and Exchange Commission ("SEC" or "Commission").

**Action:** Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

**Applicant:** L.R. Burtschy & Company ("Applicant")

**Relevant Advisers Act Sections:** Exemption requested under Section 202(a)(11)(H) of the Advisers Act from Section 202(a)(11) of the Advisers Act. Summary of Application: Applicant requests that the Commission issue an order declaring it to be a person not within the intent of the Section 202(a)(11) of the Advisers Act, which defines the term "investment adviser."

**Filing Dates:** The application was filed on [DATE].

**Hearing or Notification of Hearing:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on [DATE] and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

**Addresses:** Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Applicant, L.R. Burtschy & Company, c/o Lawrence F. Burtschy, 332 East Bay Street, Charleston, SC 29401

**For Further Information Contact:** [NAME(S), TITLE(S)], at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**Supplementary Information:** The following is a summary of the application. The complete application may be obtained via the Commission's website either at <http://www.sec.gov/rules/iareleases.shtml> or by searching for the file number, or for an applicant using the Applicant name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551- 8090.

**Applicant's Representations:**

1. The Applicant is a multi-generational single-family office which provides or intends to provide services to the family and descendants of John Hillenbrand ("Common Ancestor"). The Applicant is The Company is owned, primarily by a granddaughter, grandson-in-law and great grandson of the Common Ancestor (direct lineal descendants of Common Ancestor). For purposes of this Application, the "Burtschy Family" or "Family" means and refers to the lineal descendants of the Common Ancestor, their spouses or spousal equivalents, and other persons and entities that qualify as "Family Clients" as defined in paragraph (d)(4) of Rule 202(a)(11)(G)-1 (the "Family Office Rule"). Capitalized terms used but not otherwise defined in this Application shall have the meanings assigned to such terms in the Family Office Rule.

2. The Applicant provides or intends to provide both advisory and non-advisory services (collectively, the "Services") to members of the Burtschy Family. Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service."

3. The Applicant represents that: (i) other than the exception discussed in representation 4 below, each of the persons to whom Services are or will be provided by the Applicant is a Family Client, i.e., the Applicant has no investment advisory clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule; (ii) the Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, the Applicant represents that there are approximately 11 Family Clients accounts for which the Applicant provides or will provide Services.

4. In addition to the Family Clients, the Applicant desires to provide Services (including Advisory Services) to two relatives of a lineal descendant of the Common Ancestor, the Additional Family Client.

5. The Additional Family Client does not have an ownership interest in the Applicant. The Applicant represents that, if the Additional Family Client's assets were managed by the Applicant, the assets owned by the Additional Family Client would represent less than five percent (5%) of the Applicant's assets under management.

6. The Applicant represents that it has provided Services to the Additional Family Client since prior to 1967. The Applicant also represents that the Additional Family Client

has important familial ties to and is an integral part of the Burtschy family. The Applicant maintains that including the Additional Family Client in the "family" simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for at least 50 years while the assets of the Additional Family Client were managed by the Company.

#### Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities ..."

2. The Applicant falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Applicant would be eligible but for its provision of Services to the Additional Family Client.

3. The Applicant submits that its proposed relationship with the Additional Family Client does not change the nature of the family office into that of a commercial advisory firm. Furthermore, the Applicant submits that it is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Client do not fall within the definition of Family Member, they have been considered, and treated as, close members of the Family for many years.

4. The Applicant submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant is a private organization that was formed in order to provide Services to the Burtschy Family. The Applicant's clients are comprised solely of Family Clients and, if the requested relief is granted, an Additional Family Client. The Applicant maintains that its Services are exclusively tailored to the needs of the Burtschy Family. The Applicant argues that the provision of Advisory Services to the Additional Family Client, does not create any public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant argues that the considerations raised by the Applicant and the Burtschy Family mirror those applicable to a family office that complies in all respects with the Family Office Rule.

5. The Applicant argues that, upon the adoption of the Family Office Rule, the Commission did not rescind exemptive orders previously issued before adoption of the Family Office Rule. In the Adopting Release to the Family Office Rule, the Commission stated that the scope of the Family Office Rule is generally consistent with the conditions of the prior exemptive orders issued to family offices. The Commission noted that family offices would remain free to seek an exemptive order by the Commission to address certain unique

situations. Since adoption of the Family Office Rule, the Commission has issued several family office exemptive orders based on applications similar to that of the Applicant. These orders recognize unique circumstances in which an entity provides advisory services to a slightly broader spectrum of individuals, but the entity remains focused on a single family's needs and its operations do not become commercial in nature.

6. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

#### The Applicant's Conditions

1. The Company will offer and provide Advisory Services only to Family Clients, as defined in paragraph (d)(4) of the Family Office Rule, and to the Additional Family Client, as defined above; provided that if a person who is not a Family Client becomes a client of the Company as a result of any involuntary transfer from the Additional Family, that person shall be deemed to be a Family Client for one year following the completion of the transfer of legal title to the assets resulting from the involuntary event.
2. The Company will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more members of the Burtschy Family and/or family entities as defined in paragraph (d)(5) of the Family Office Rule.
3. The Company will not hold itself out to the public as an investment adviser.
4. At all times assets beneficially owned by Family Clients, as defined in the Family Office Rule, will account for at least 90% of the assets for which the Company provides Advisory Services.
5. The Company will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application.