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November 17, 2010

BY EMAIL

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

Re: File No. S7-25-10; Release No. IA-3098;
Family Offices

Ladies and Gentlemen:

We are pleased to provide comments on the Proposed Rule on Family Offices (the "Proposed Rule"), which proposes a rule to define "family offices" that would be excluded from the definition of an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act").

Section 203(b)(3) of the Advisers Act, which provides relief for any adviser that during the preceding 12 months had fewer than 15 clients and neither held itself out to the public as an investment adviser nor advised any registered investment company or business development company, will be repealed, effective July 21, 2011, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). In order to preserve an exemption for family offices of the type that have been traditionally exempt from registration under the Advisers Act pursuant to the 15-client exemption, Section 409 of the Dodd-Frank Act creates a new exclusion from the Advisers Act in section 202(a)(11)(G), under which family offices, as defined by the Commission, will not be considered investment advisers subject to the Advisers Act. In the Proposed Rule you have undertaken to define "family offices".

We represent 13 family offices that have been exempt from registration under the 15-client exemption, in some cases coupled with reliance on the guidance contained in exemptive orders issued by the Commission under the Advisers Act declaring certain family offices not to be investment advisers within the intent of section 202(a)(11) of the Advisers Act. As a result of our discussions with some of these clients and our experience in such

representations generally, we make the following comments for your consideration in assessing possible changes to the Proposed Rule.

1. Definition of "family member"; introductory comments. We believe that the definition of "family member" in the Proposed Rule is unduly restrictive when taking into account the ways in which family offices have been traditionally structured and operated, and is, in some respects, too restrictive in its conception of what constitutes a modern family. The Proposed Rule recognizes accurately that the family unit is not a stagnant institution by including such relationships as stepchildren and spousal equivalents within the definition of family members. Not so long ago the inclusion of such persons may not have been expected or thought to be necessary. While we welcome the inclusion of such persons in the Proposed Rule, we think that further expansion of the concept of family is warranted.

   We see no public policy interest in narrowly construing the meaning of "family member" or in requiring the Staff to deal piecemeal with the inevitable myriad of requests for exemptive relief or clarification that would ensue from a narrow construction of that term. We believe that the key to properly implementing Section 409 of the Dodd-Frank Act is to recognize the core values of family autonomy and flexibility by removing conditions or other constraints that require, or that would have the practical effect of requiring, family offices to contort their existing structures to satisfy the technical requirements of an unduly cautious exemption.

   In the absence of any evidence that family offices have been a significant vehicle for inflicting investment advisory fraud upon the public, those contortions represent potentially significant administrative and tax costs to existing family offices, as well as matters of high personal sensitivity. Moreover, given the tax and legal reasons for embodying charitable giving and estate planning in formal legal documentation, often involving third parties and irrevocable gifts, it may not be possible for a family office even to complete the contortions required to comply with a narrowly cast exemption.[1]

   To the extent that a family office is able to get past the initial contortions, the conditions would still have the unfortunate effect of inserting federal securities law considerations into sensitive personal matters generally governed by state law. Requiring a family member to consider the Advisers Act implications of a proposed divorce settlement or

[1] For example, it is not unusual for a family member to make a charitable commitment to an educational institution by way of a will or trust arrangement. Such arrangements usually involve contractual commitments to the educational institutions and may be irrevocable pursuant to the trust documents. These decisions cannot easily be undone or modified in order to comply with a narrow exemption, and they often require the consent of third parties.

adoption would in our view needlessly complicate one of the most sensitive and personal aspects of his or her life.

We would expect that adoption of the Proposed Rule in its current form would place a significant demand on the resources of the Staff as existing family offices seek clarifications, exemptive orders and/or amendments to the exemption as promulgated in order to confirm their eligibility to avoid registration. Given the constantly changing environment of tax, legal, financial, social, charitable and personal factors that influence the founding and operation of family offices, we would expect the demand on the Staff to be significant on an ongoing basis. We respectfully submit that, without posing any public policy risk, a broader definition of "family member" would fit more with the legislative intention behind Section 409 of the Dodd-Frank Act and would permit the Staff to allocate its resources more productively for the realization of the policies behind the Advisers Act.

(a) Stepchildren. You requested comment on your proposed inclusion of stepchildren within the meaning of the term "family members" for purposes of the "family office" definition. Specifically, you asked whether you should include stepchildren as "family members" and whether there are any additional conditions that you should impose if stepchildren are included as "family members".

We believe that it is appropriate to include stepchildren within the definition of "family members", and we do not believe that there are any additional conditions that you should impose. In our view, imposing additional conditions would intrude into the highly personal family dynamics which Section 409 of the Dodd-Frank Act clearly seeks to shelter. At a time when the notion of what is a "family" continues to evolve due to changing mores and customs, the inclusion of stepchildren within the definition of "family members" provides appropriate flexibility for family offices to be founded, structured, administered and operated free from the requirement of Advisers Act registration.

(b) Spousal Equivalent. You requested comment on your proposed definition of "spousal equivalent".

We believe that your definition of "spousal equivalent", which mirrors the definition of that term currently used under your auditor independence rules, is appropriate. For many of the same reasons (family autonomy, flexibility, etc.) that we support the inclusion of stepchildren in the definition of "family members", we also support the inclusion of spousal equivalents in that definition.

(c) Parents of Founders. You requested comment on your inclusion of parents of the founders as "family members" under the Proposed Rule.

We believe that it is appropriate to include parents of founders as "family members". A founder should have the option to include his/her parents as clients of a family office but should not be required to do so. The inclusion of parents of founders within the definition of "family members" provides that flexibility.

In addition, we believe that you should include any lineal ancestor of a founder (including by adoption), as well as such ancestors' siblings (including stepsiblings and half-siblings) in the definition of "family members". A founder should have the option to include his/her grandparents and aunts and uncles, for example, as clients of a family office but should not be required to do so. The inclusion of lineal ancestors of founders and such ancestors' siblings within the definition of "family members" provides that flexibility.

For many of the same reasons, we believe that you should include spouses, spousal equivalents and stepchildren of lineal ancestors within the definition of "family members". As recognized by your inclusion of stepchildren in the definition of "family members", the stepparent-stepchild relationship can engender close ties and implicate the values of family autonomy and flexibility noted above. A founder should have the option to include his/her parents' or grandparents' spouses, spousal equivalents or stepchildren as clients of a family office but should not be required to do so. The inclusion of spouses, spousal equivalents and stepchildren of the founders' lineal ancestors within the definition of "family members" would provide that flexibility.

(d) Siblings and Spouses. You requested comment on your inclusion of siblings and their spouses and descendants in the definition of family client.

We believe that it is appropriate to include siblings of founders, such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents as "family members". As you noted, these individuals often have close ties to founders. As such, a founder should have the option to include them as clients of a family office but should not be required to do so. The inclusion of founders' siblings and their spouses and descendants within the definition of "family members" provides the desired flexibility.

In addition, we suggest that you explicitly include founders' half-siblings and stepsiblings, and their spouses and descendants, within the definition of "family members". Founders may have close family ties to their half-siblings and stepsiblings, as well as to such individual's spouses or spousal equivalents, their lineal descendents and their lineal descendents' spouses or spousal equivalents. A founder should have the option to include any of these individuals as clients of a

family office but should not be required to do so. The inclusion of founders' half-siblings and stepsiblings, such individuals' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents within the definition of "family members" would provide the desired flexibility.

(e) Overall Definition of Family Member. You requested comment on your definition of family member. Specifically, you asked whether you are drawing the line too broadly or too narrowly regarding when the clientele of a family office starts to resemble that of a typical commercial investment adviser and not a single family. You also asked whether there are any other types of family members that should be included, and why or why not.

In addition to the specific suggestions made above, we believe that wards through legal guardianship should be treated the same way as are lineal descendents and stepchildren throughout the Proposed Rule. A founder should have the option to include his/her wards and the wards of his/her lineal ancestors, siblings, half-siblings or stepsiblings as clients of a family office but should not be required to do so. The inclusion of founders' and their half-siblings' and stepsiblings' wards within the definition of "family members" would provide the desired flexibility. For consistency, we believe that a ward who was a family member but who is no longer a family member should be included in the definition of "former family member".

(f) Multifamily Offices. You requested comment on whether you should permit multifamily offices to operate under this exclusion from the Advisers Act, and if so, how you should distinguish between a multifamily commercial office and an office more closely resembling those operating under your exemptive orders (except providing advice to multiple families).

Although some of our family office clients have on occasion considered the possibility of evolving into multi-family offices, we do not have sufficient practical experience with multi-family offices to warrant commentary on the possibility of exempting them by rule from the Advisers Act at this time.

2. Involuntary Transfers. You requested comment on your proposed approach regarding involuntary transfers. Specifically, you asked whether you should permit family clients to transfer assets advised by the family office to non-family clients if there is a death or other involuntary event without jeopardizing the ability of the family office to rely on the exclusion under the proposed rule. You also asked how you would distinguish between a typical commercial adviser serving both related and unrelated clients from a family office resembling those operating under your prior exemptive orders. Finally, you asked

whether you should allow a different period of time or transition mechanism to transfer assets that a non-family client receives in an involuntary transfer to another investment adviser.

Overall, we believe that the Proposed Rule addresses involuntary transfers to non-family clients appropriately. We believe that it is appropriate to provide a non-family client that receives an involuntary transfer with a reasonable period of time to transfer the assets it receives to another investment adviser. We also believe that it is appropriate to permit a family office to continue to advise a non-family client that receives an involuntary transfer until it transfers the assets it receives in the involuntary transfer to another investment adviser without jeopardizing the family office's ability to rely on the family office exclusion. The Proposed Rule permits a family office to continue to advise a non-family client that receives an involuntary transfer for four months following an involuntary transfer. We suggest, however, that due to the legal and practical complications that often attend such transfers, one year would be a more reasonable period of time in which to require a non-family client that receives an involuntary transfer to transfer the assets it receives to another investment adviser.

In addition, we suggest that you explicitly provide that the window to transfer the assets does not begin to run until it becomes legally and practically feasible for the family office to effect a transfer of the assets. This would protect the family office from having to register as an investment adviser if the ability to redeem the assets is restricted by contract or if the assets are otherwise illiquid.

3. Former Family Members. You requested comment on your approach to former family members retaining investments held through the family office at the time they become former family members and limiting former family members from making new investments through the family office. Specifically, you asked whether former family members should be excluded and whether other approaches should be considered to treat such persons.

We believe that a family member should be permitted to remain a family client even after becoming a former family member without requiring the family office to register under the Advisers Act. We believe that such an individual should be permitted to continue to receive investment advice from the family office (or invest additional assets with a family office-advised trust, foundation or entity) even with respect to assets advised (directly or indirectly) by the family office after the time that the individual became a former family member.

After an amicable divorce, a family member and his/her divorced spouse might both want the family office to continue to service the divorced spouse. In such a case, access to the family office should be available to the former spouse. This is all the more conceivable

when one considers former stepchildren or former wards. Moreover, even in a divorce that is less than amicable, it should be up to the family office and the former spouse to work out the former spouse' rights of access to the family office (e.g. pursuant to a divorce agreement or a court order). The family member should not be able to use access to the family office to gain leverage over the former spouse. We note that the Advisers Act does not currently address family law in any general way, and we believe that it is not appropriate for it to do so.

In addition, we believe that for both former family members and former key employees, there are significant practical administrative issues associated with the bifurcation between "pre" and "post" investment advice contemplated by the Proposed Rule. Under the Proposed Rule, interest payments received by either a former family member or a former key employee would presumably not be permitted to be reinvested by the family office; indeed, the cash proceeds presumably could not even be held in a money market fund controlled by the family office, since the cash interest payment would not be the same "asset" as the holdings on which the interest payment was made. The conversion of convertible or exchangeable securities, or the receipt of securities issued in a merger or recapitalization, would likewise presumably have to be immediately redelivered to the former family member or former key employee as a new asset for which the family office could not provide advice without the obligation to register as an investment adviser. These examples illustrate the kinds of interpretative issues likely to be presented to the Staff by any attempt to hinge exemption on the tracing of assets. We see no adverse impact on the objectives of the Advisers Act in permitting former family members and former key employees to continue, on a voluntary basis, to use the family office for investment advice.

4. Family Trusts, Charitable Organizations and Other Family Entities. You requested comment on your treatment of each of the following as "family clients": (i) charitable foundations, charitable organizations, and charitable trusts established and funded exclusively by one or more family members or former family members; (ii) trusts and estates existing for the sole benefit of one or more family clients; and (iii) companies, including pooled investment vehicles, which are wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more family clients.

We believe that the Proposed Rule is far too stringent in this area. We urge the Staff to consider the diversity of organizational structures that are utilized by family offices. For your reference, we offer below illustrative examples of a few of the ways in which family offices are organized currently. Among the more common variations in our experience are the following, somewhat simplified examples:

(a) Family office advisory activities are contained in a corporation which is wholly owned, through two intermediary corporations, by a trust for the primary benefit of family members other than the founder, who is the settlor, although there are also nonfamily beneficiaries such as charities.

(b) An independent law firm acts functionally as the family office, with advisory services rendered through contracts between the founder and his trusts, on the one hand, and the chief investment officer (CIO) and his majority-owned limited liability company, on the other. The CIO's entity has minority ownership by family members and the founder's trusts, as well as by the partners in the law firm. The lawyers act as trustees and operate under powers of attorney granted by the founder. Office space used by the founder, the CIO, the family office staff and the law firm is leased in the name of the law firm.

(c) An industrial operating corporation acquired by the founder and divested of its operating assets now functions as the family office and is owned by a wide array of trusts for family members and charities. Because of significant ownership positions in operating companies, including public companies registered under the Securities Exchange Act of 1934, the corporation that serves as the family office has a large administrative staff devoted to conventional holding company activities, with family office advisory activities taking up a small portion of the corporation's resources.

We suspect that this degree of variation, which is taken only from our client base, merely hints at the variations one would encounter with a more meaningful subset of the existing family offices. As we discuss below, the keys to modifying the Proposed Rule to take appropriate account of the variations in family office structure, without compromising the goals of Advisers Act regulation, is to relax the restrictions on ownership and control of family offices contained in the current proposal.

For example, the Proposed Rule limits the charitable entities that would be considered "family clients" to those established and funded exclusively by one or more family members or former family members. This limitation could have ill effects on traditional estate planning. For example, a family office would be prevented from giving investment advice to a trust that has, as a remote charitable beneficiary, a charity that is not funded exclusively by family members or former family members. We do not see any public policy purpose in limiting charitable entities that are eligible to be "family clients" to those funded exclusively by family members or former family members. We suggest that charitable organizations established or funded primarily, rather than exclusively, by family members or former family members should be permitted to be family clients.

Similarly, we believe that companies that are either majority owned or controlled by one or more family clients should be treated as family clients. We do not think that there is a public policy reason for imposing the limitation that companies need to be wholly owned and controlled exclusively by family clients in order to themselves qualify as family clients. In addition, we believe that trusts and estates existing for, and companies operated for, the primary benefit, rather than the sole benefit, of one or more family clients should be permitted to be family clients.

Finally, we believe that each of the above categories should be treated not as "family clients", but as "family members". This is an important distinction, because in order to be considered a "family office" within the definition in the Proposed Rule, a family office must be wholly owned and controlled (directly or indirectly) by family members. Family offices are often structured in complex ways for estate planning purposes. For example, we estimate that approximately 50% of family offices are owned or controlled by trusts that exist for the primary benefit of one or more family members. We believe that it would be appropriate to treat family trusts, charitable organizations or other family entities as "family members" so that family offices that are owned and/or controlled by any of the foregoing would be included within the exemption.

The Proposed Rule's limitations on the kinds of charitable entities, trusts and other legal entities would in our view likely require a number of our family office clients to undergo substantial legal restructuring, register under the Advisers Act or submit individualized applications for exemptive relief.

5. Key Employees. You requested comment on your proposed treatment of investments by employees of the family office. Specifically, you asked whether you should permit key employees to receive investment advice through the family office; whether family offices rely on allowing co-investment to attract talented investment professionals to work at the family office; whether the definition of key employee should be based on the "knowledgeable employee" standard in the Advisers Act; whether there are restrictions that you should consider imposing as a condition to such investment to help protect non-family members investing through the family office; whether you should allow former key employees to retain their investments through the family office at the time of termination; whether you are imposing conditions that are too restrictive (for example, whether you should modify or eliminate the 12-month experience requirement for key employees); and whether there are any other types of individuals or entities that should be permitted to invest through the family office without jeopardizing the family office's exclusion under the Advisers Act.

We believe that it is appropriate to permit key employees to qualify as family clients, because we believe that allowing key employees to receive investment advice through the family office helps to attract talented investment professionals to work at the family

office. We also believe that basing the definition of key employee on the "knowledgeable employee" standard in the Advisers Act is appropriate and that you need not impose any restrictions as a condition to co-investment by employees who qualify as "knowledgeable employees" under that standard.

However, we believe that the Proposed Rule's 12 month experience requirement for key employees is too restrictive. Starting from the predicate that a key employee is in fact a key employee, we see no need to impose a uniform 12 month experience requirement. Particularly for investment professionals, a 12 month freeze out from participating in the investment returns from the family portfolios would likely hinder the comparative ability of family offices to retain high quality talent. Thus, we suggest that the proviso at the end of the definition of "key employee" be deleted.

In addition, we believe that the key employee definition should be expanded to include spouses and spousal equivalents of key employees. This would enable a key employee to co-invest funds that s/he might hold jointly with his/her spouse or spousal equivalent without jeopardizing the family office's exclusion under the Advisers Act.

6. Overall Definition of Family Client. You requested comment on your definition of "family client." More specifically, you asked whether there are other individuals or entities that have close ties to a family that should be included as family clients.

Other than as we have already stated above, we believe that the definition of "family client" in the Proposed Rule is appropriately inclusive. However, we believe that family offices should be permitted to advise certain entities other than family clients (and in some cases former family clients). In particular, a family office should be permitted to manage pension plans, deferred compensation plans and 401K plans for the benefit of employees (not just "key employees") and former employees without requiring regulation or exemptive relief under the Advisers Act.

In a December 5, 1995 "no-action letter," the Commission stated that "[t]he employer-employee relationship is unlike the commercial relationship between an investment adviser and its client that the Advisers Act was intended to regulate."[2] As such, we do not believe that the Advisers Act should play a role in regulating employee benefit plans or limit family offices from providing investment advice to such plans. Indeed, the Employee Retirement Income Security Act of 1974 regulates employee benefit plans and protects the interests of plan participants and their beneficiaries, so there is no need for the Advisers Act to provide additional regulation in that area. Furthermore, we believe that, from a public policy perspective, the Commission should encourage the existence of

[2] *Letter to Olena Berg*, SEC No-Action Letter (Dec. 5, 1995).

employee benefit plans that are open to all employees. Such plans serve to encourage employees at all levels to save for retirement and employers to sponsor plans to encourage such savings.

During a debate in the Senate regarding Section 409 of the Dodd-Frank Act, there was a discussion between Senators Lincoln and Dodd. Senator Lincoln noted that, in addition to key employees, "family offices may have a small number of co-investors such as persons who help identify investment opportunities, provide professional advice, or managed portfolio companies. However, the value of investments by such other persons should not exceed a de minis percentage of the total value of the assets managed by the family office. Accordingly, section 409 directs the SEC not to exclude a family office from the definition by reason if its providing investment advice to these persons." In his response, Senator Dodd remarked that, "[i]t was my intent that the rule would ... not exclude any person who was not registered or required to be registered under the Advisers Act from the definition of the term "family office" solely because such person provides investment advice to ... natural persons who identify investment opportunities to the family office and invest in such transactions on substantially the same terms as the family office invests, but do not invest in other funds advised by the family office, and whose assets to which the family office provides investment advice represent, in the aggregate, not more than 5 percent of the total assets as to which the family office provides investment advice."

We suggest that a family office be permitted to provide investment advice to certain persons that are not "family clients" and that those persons be permitted to co-invest with the family office so long as the collective value of such persons' investments do not exceed 5 percent of the total assets managed by the family office.

The overall purpose of the Advisers Act is to protect the public, which would otherwise be vulnerable, from unscrupulous investment advisers. This can occur when an investment adviser solicits the public. Family offices do not advertise or market themselves to, let alone solicit or accept money from, the public. In the case of pension or deferred compensation plans, family offices often do not charge anything for managing the assets of such plans. In a June 5, 2006 "no-action letter", the Commission declined to require Lockheed Martin Investment Management Company ("LMIMCo") to register as an investment adviser despite its provision of investment advisory services to employee benefit plans.[3] LMIMCo received reimbursements of its costs and expenses, but some family offices do not even charge overhead fees to such plans. We believe that

[3] *Letter to Lockheed Martin Investment Management Company*, SEC No-Action Letter (June 5, 2006).

allowing family offices to provide investment advice in accordance with our suggestion would not increase the risk to the public.

7. Ownership and Control. You requested comment on the condition that the family office be wholly owned and controlled by family members. Specifically, you asked whether there are reasons that you should not require that the family office be wholly owned and controlled by family members; whether some minor ownership stake of non-family members should be permitted; whether there are other restrictions on ownership and control of the family office that you should impose consistent with your policy goals; and whether you should also require that the family office be operated without the intent of generating a profit or only charge fees designed to cover its costs and the compensation of its employees.

As we noted above, family offices are often structured in complex ways for estate planning purposes. We believe that it would be appropriate to allow trusts or estates that exist for the primary benefit of one or more family members, or other family entities, to have minority ownership and/or minority control over a family office. Similarly, we believe that either majority ownership or control by family members should be sufficient to enable a family office to fit within the definition.

We also note that the language of the Proposed Rule regarding ownership and control of family offices is not entirely clear. As stated in the Proposed Rule, one of the requirements for a family office is that it be "wholly owned and controlled (directly or indirectly) by family members." We assume that the word "wholly" is meant to modify only the word "owned". Our reading is encouraged by the fact that the definition of "family client" in the Proposed Rule includes "[a]ny limited liability company, partnership, corporation, or other entity wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more family clients." That the word "exclusively" modifies "controlled" in the definition of family client but does not appear in the requirement that family offices be controlled by family members suggests that family offices need not be controlled exclusively by family members. We believe that this is the correct result, since we believe that a family office should not be excluded from the exemption merely because a non-family member exerts minority control over it. We suggest that you clarify the language regarding ownership and control of family offices so that it is consistent with our reading of the Proposed Rule.

We do not believe that you should impose any other restrictions on ownership and control of the family office, and we do not believe that you should require that family offices be operated without the intent of generating a profit or only charge fees designed to cover their costs and the compensation of their employees.

8. Holding Out. You requested comment on the prohibition against a family office holding itself out to the public as an investment adviser. Specifically, you asked whether there are circumstances where a family office holding itself out to the general public as an investment adviser should nevertheless be excluded from the protections afforded to the investing public under the Advisers Act.

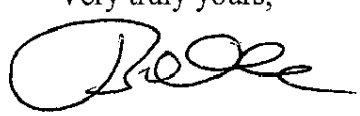
   We believe that it is appropriate to prohibit family offices from holding themselves out to the public as investment advisers. As we noted above, the main purpose of the Advisers Act is to protect the general public from being taken advantage of by disreputable investment managers. If family offices were permitted to hold themselves out to the public as investment advisers without being subject to the Advisers Act, the public would be vulnerable to abuse by them. We are not aware of any circumstances in which a family office that holds itself out to the general public as an investment adviser should be excluded from the protections afforded to the public under the Advisers Act.

9. Previously Issued Exemptive Orders. You requested comment on whether you should rescind previous exemptive orders granted to family offices under the Advisers Act. Specifically, you asked whether you should rescind the very early orders that did not impose all of the same conditions as more recent orders.

   We do not believe that you should rescind previously issued exemptive orders even if some of them do not impose all of the same conditions as the more recent orders. As you noted in the proposing release, the policy behind the previously issued orders does not differ much from the policy behind the Proposed Rule, and the ability for some family offices to rely on more lenient exemptive orders has no negative effect on any other family offices.

For your convenience, attached as Exhibit A is a marked version of the Proposed Rule showing our suggested revisions. Please call Thomas D. Balliett (212-715-9164), Zoe D. Leibowitz (212-715-9318) or Michael L. Kreiner (212-715-9328) if you would like to discuss any of our comments.

Very truly yours,



Thomas D. Balliett

cc: Zoe D. Leibowitz
Michael L. Kreiner

Exhibit A

PART 275 – RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b6(4), 80b-6a, and 80b-11, unless otherwise noted.

* * * * *

2. Section 275.202(a)(11)(G)-1 is added to read as follows:

§ 275.202(a)(11)(G)-1 Family offices.

(a) Exclusion. A family office, as defined in this section, shall not be considered to be an investment adviser for purpose of the Act.

(b) Family office. A family office is a company (including its directors, partners, trustees, and employees acting within the scope of their position or employment) that:

(1) Has no clients other than (i) permitted employee plans; and (ii) family clients; provided that if a person that is not a family client becomes a client of the family office as a result of the death of a family member or key employee or other involuntary transfer from a family member or key employee, that person shall be deemed to be a family client for purposes of this section 275.202(a)(11)(G)-1 ~~for four months~~ following the ~~transfer of assets resulting from the~~ involuntary event, for one year after it is legally and practically feasible for that person to transfer the assets;

(2) Is ~~wholly~~at least majority owned ~~and~~or is controlled (directly or indirectly) by family members; and

(3) Does not hold itself out to the public as an investment adviser.

(c) *Grandfathering*. A family office as defined in paragraph (a) above shall not exclude any person, who was not registered or required to be registered under the Act on January 1, 2010, solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to:

(1) Natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who have invested with the family office before January 1, 2010 and are accredited investors, as defined in Regulation D under the Securities Act of 1933;

(2) Any company owned exclusively and controlled by one or more family members; or

(3) Any investment adviser registered under the Act that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represents, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice; provided that a family office that would not be a family office but for this subsection (c) shall be deemed to be an investment adviser for purposes of paragraphs (1), (2) and (4) of section 206 of the Act.

(d) *Definitions*. For purposes of this section:

(1) *Control* means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of being an officer of such company.

(2) *Family client* means:

(i) Any family member;

(ii) Any key employee and their spouses and spousal equivalents;

(iii) Any ~~charitable foundation, charitable organization, or charitable trust~~former family member; or

(iv) Any former key employee.

(3) *Family member* means:

(i) the founders, their lineal ancestors and the lineal descendants (including by adoption and stepchildren) and wards of the founders and their lineal ancestors, and the spouses or spousal equivalents of such lineal ancestors, lineal descendants and wards;

(ii) the siblings, half-siblings and stepsiblings of each person identified in clause (i) and such siblings', half-siblings' and stepsiblings' spouses or spousal equivalents, and their lineal descendants (including by adoption and stepchildren) and wards, and such lineal descendants' and wards' spouses or spousal equivalents;

(iii) charitable foundations, charitable organizations, and charitable trusts, in each case established and funded ~~exclusively~~primarily by one or more family members or former family members;

(iv) ~~Any trust or estate~~trusts and estates existing for the ~~sole~~primary benefit of one or more family ~~clients;~~members; and

(v) ~~Any~~ limited liability ~~company, partnership, corporation, or other entity wholly owned and~~companies, partnerships, corporations and other entities majority owned or controlled (directly or indirectly) ~~exclusively~~ by, and operated for the ~~sole~~primary benefit of, one or more family clients; provided that if any such entity is a

pooled investment vehicle, it is ~~excepted~~exempted from the definition of "investment company" under the Investment Company Act of ~~1940;~~1940.

~~(vi) Any former family member, provided that from and after becoming a former family member the individual shall not receive investment advice from the family office (or invest additional assets with a family office advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the time that the individual became a former family member, except that a former family member shall be permitted to receive investment advice from the family office with respect to additional investments that the former family member was contractually obligated to make, and that relate to a family office advised investment existing, in each case prior to the time the person became a former family member; or~~

~~(vii) Any former key employee, provided that upon the end of such individual's employment by the family office, the former key employee shall not receive investment advice from the family office (or invest additional assets with a family office advised trust, foundation or entity) other than with respect to assets advised (directly or indirectly) by the family office immediately prior to the end of such individual's employment, except that a former key employee shall be permitted to receive investment advice from the family office with respect to additional investments that the former key employee was contractually obligated to make, and that relate to a family office advised investment existing, in each case prior to the time the person became a former key employee.~~

~~(3) *Family member* means:~~

~~(i) the founders, their lineal descendants (including by adoption and stepchildren), and such lineal descendants' spouses or spousal equivalents;~~

~~(ii) the parents of the founders; and~~

~~(iii) the siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendants (including by adoption and stepchildren) and such lineal descendants' spouses or spousal equivalents.~~

(4) *Former family member* means a spouse, spousal equivalent, ~~or~~ stepchild, or ward that was a family member but is no longer a family member due to a divorce or other similar event.

(5) *Founders* means the natural person and his or her spouse or spousal equivalent for whose benefit the family office was established and any subsequent spouse of such individuals.

(6) *Key employee* means any natural person and his or her spouse or spousal equivalent (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 a 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~~.

(7) *Permitted employee plan* means a pension or other savings plan (including without limitation defined benefit plans, defined contribution plans and deferred

compensation plans) that is sponsored by the family office for the primary benefit of its employees.

(8) *Spousal equivalent* means a cohabitant occupying a relationship generally equivalent to that of a spouse.

(9) *Ward* means a person placed under the protection of a legal guardian.