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November 17, 2010

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

Re: Family Offices, Proposed Rule
Release No. IA–3098; File No. S7–25–10

Dear Ms. Murphy:

Bessemer Securities Corporation, Bessemer Securities LLC, and our related entities ("Bessemer") are pleased to submit comments on the rule proposed by the Commission in Release No. IA-3098.[1] The Proposed Rule will implement Section 409 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), which adds Section 202(a)(11)(G) to the Investment Advisers Act ("Advisers Act").[2] Section 202(a)(11)(G) authorizes the Commission to exempt "family offices" from the Advisers Act by a rule of general applicability. Rule 202(a)(11)(G)–1,[3] once adopted, will implement the new authority.

The Advisers Act has, since its enactment in 1940, authorized the Commission to grant exemptions from the Advisers Act by individual order, and the Commission has used that authority on many occasions to exempt individual family offices.[4]

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[1] SEC, *Family Offices* (Proposed Rule), 75 Fed. Reg. 63753 (Oct. 18, 2010).

[2] 15 U.S.C. § 80b.

[3] Proposed to be codified at 17 C.F.R. § 275.202(a)(11)(G)–1.

[4] *WLD Enterprises, Inc.*, Rel. No.IA- 2807 (Nov. 14, 2008); *Woodcock Financial Management Company, LLC*, Rel. No. IA-2787 (Sept. 24, 2008); *In the Matter of Slick Enterprises Inc.*, Rel. No. IA-2745 (June 20, 2008); *In the Matter of Gates Capital Partners, LLC and Bear Creek, Inc.*, Rel. No. IA-2599 (Mar. 20, 2007); *In the Matter of Adler Management, L.L.C.*, Rel. No. IA-2508 (April 14, 2006); *In the Matter of Riverton Management, Inc.*, Rel. No. IA-2471 (Jan. 6, 2006); *In the Matter of Parkland Management Company, L.L.C.*, Rel. No. IA-2369 (March 22, 2005); *In the Matter of Longview Management Group LLC*, Rel. No. IA-2013 (Feb. 7, 2002); *In the Matter of Kamilche Company*, Rel. No. IA-1970 (Aug. 27, 2001); *In the Matter of Bear Creek Inc.*, Rel. No.

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We understand the intent of the Commission is to adopt a rule that exempts normal family investment arrangements, but that does not exempt persons or companies that provide advisory services outside of family relationships.

We address eight areas in our comments: (1) the status of internally-managed companies under the family office exemption; (2) ownership in part by "family clients" that are not "family members;" (3) status of exempted family investment companies as "family clients;" (4) indirect ownership of a family office through trusts for family members; (5) the effect of future interests in trusts on the status of the trusts as "family clients" under the Proposed Rule; (6) the period of time for transfers of servicing after an "involuntary event;" (7) pension and employee benefit plans sponsored by the family office for its own employees, and (8) the definition of "founders."

1) Status of Internally Managed Companies Under the Advisers Act

Bessemer is a private, family-owned investment entity that is owned directly and indirectly by the descendants, and trusts for the benefit of the descendants, of the late Henry Phipps and a charitable trust established by Phipps family members. Bessemer was exempted from registration and regulation under the Investment Company Act by individual order issued by the Commission under that Act.[5]

Bessemer does not perform the classic "family office" activities of providing advice, servicing trusts, or managing the financial affairs of family members.[6] Instead, it administers its own internal assets, which consist of securities and other investments. Bessemer relies on external managers and advisers (which are not themselves family offices) for much of its investment activity, but has its own officers, directors and staff who perform a number of investment functions internally. Bessemer is owned and controlled by and for the benefit of members of a single family, but Bessemer does not

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IA-1935 (April 4, 2001); *In the Matter of Moreland Management Company*, Rel. No. IA-1705 (March 10, 1998); *In the Matter of The Pitcairn Company*, Rel. No. IA-52 (March 2, 1949); *In the Matter of Roosevelt & Son*, Release No. IA-54 (August 31, 1949); and *In the Matter of Donner Estates, Inc.*, Rel. No. IA-21 (November 3, 1941).

[5] *Bessemer Securities LLC et al.*, Rel. No. IC-22377 (Dec, 6, 1996)(notice); Rel. No. IC-22420 (Dec. 30, 1996)(order); *Bessemer Securities Corporation et al.*, Rel. No. IC-18529 (Feb. 5, 1992)(notice); Rel. No. IC-18594 (Mar. 3, 1992)(order).

[6] Those types of services are provided to members of the Phipps family, and other families, by a separate company, The Bessemer Group, Incorporated, through its subsidiary banks and trust companies. The Bessemer Group, Incorporated is owned under a different set of trusts for the benefit of Phipps family members. The Bessemer Trust Companies are "banks" that are chartered and regulated by state and federal banking regulators, are excluded from the definition of "investment adviser" by Section 202(a)(11)(A) of the Advisers Act and do not need to rely on the family office exemption.

administer other assets belonging to family members or other persons, or advise family members or other persons about investments in securities.

To the extent that it triggers the definition of "investment adviser" in Section 202 of the Advisers Act at all, Bessemer's "clients" would all appear to be "family clients" within the meaning of the Proposed Rule, because Bessemer's only "client" is Bessemer itself, and Bessemer appears to meet the definition of a "family client." Bessemer's direct and indirect ownership similarly is limited to "family clients" as defined in the Proposed Rule. One of those indirect owners, however, is a charitable trust established by family members.

The basic definition of an "investment adviser" in Section 202 of the Advisers Act is "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...." (emphasis added).

We believe that it would be an inherently flawed application of the Advisers Act to treat an internally-managed entity as within the broad definition of "investment adviser" as a result of providing investment advice to itself. The investment entity is not engaged in the business of providing investment advice to others. It does not charge a fee for doing so, or have a client other than itself.

Moreover, by treating an internally-managed entity as an "investment adviser" because it manages its own assets, a broader issue is raised as to whether other companies with general business operations that have a portion of their assets invested in securities which they manage internally through a treasury function (as most do), are "investment advisers." Simply put, companies that invest in securities should not be viewed as within the definition of an "investment adviser," nor should the officers, directors and employees of such a company that perform investment-related functions for the company.

Therefore, we respectfully suggest that the final rules implementing the family office exemption clarify that a company is not an "investment adviser" as a result of managing its own investment portfolio and, accordingly, that such a company does not need to rely on the family office exemption.

2) Partial Ownership of Family Offices by "Family Clients"

In the case of a private family investment vehicle, such as Bessemer, the company is not a provider of services to family members, but instead is a pool of investments that represents a portion of the family's assets. The investments generate income which is distributed over time through dividends. Although most of the ownership interests are held for the benefit of family members, a portion of the ownership of the family investment entity is held to benefit a charitable trust established by family members to further charitable purposes.

This ownership is appropriate and consistent with a family-owned entity as recognized by the existing Investment Company Act exemptive orders that Bessemer has received from the Commission. Under the definition of "family office" in the Proposed Rule, however, ownership is limited to "family members." Ownership of some portion of a family office by a "family client" such as a charitable trust or foundation is not permitted under the Proposed Rule.

At a minimum, where the "family office" is, in part, a pool of investments, rather than just a service entity, we believe it would be appropriate for the rule to permit ownership not only by family members, but also in part by charitable trusts and foundations established by family members. Accordingly, we suggest that the permitted ownership be broadened to include at least some ownership by "family clients" as defined in the Proposed Rule, perhaps capped at a minority, non-controlling interest.

3) Status of Exempted Family Investment Companies as "Family Clients"

Subsection (d)(2)(v) of the Proposed Rule defines "family client" to include a family client-owned company, "provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of "investment company" under the Investment Company Act of 1940...." As noted above, Bessemer is one of several private family investment entities that have been exempted from all provisions of the Investment Company Act by Commission Order issued under Section 6(c) of that Act. The Investment Company Act exemption granted to Bessemer by the Commission, like the Proposed Rule, is based on the status of Bessemer as a private family investment entity. By the Order, Bessemer is exempted from all provisions of the Investment Company Act, including the definition.

We understand this complete exemption from the Investment Company Act, including the definition of an "investment company", to satisfy the requirement in the Proposed Rule's definition of "family client" that a company that is a pooled investment vehicle must be "excepted from the definition of "investment company" under the Investment Company Act." It would be useful, however, in the adopting release or the final rule, to clarify that family investment companies that have received an exemption from the Commission under Section 6 of the Investment Company Act from all provisions of the Act are "family clients" within the meaning of the family office exemption.

4) "Direct or Indirect" Ownership Through Trusts

To qualify as a family office under the Proposed Rule, the company must among other things, be "wholly owned and controlled (directly or indirectly) by family members." Similarly, for a trust or other entity to qualify as a "family client" and thus be a permissible client of a family office, pursuant to Subsection (d)(2)(v) the trust or entity must be "wholly owned and controlled (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more family clients...."

Bessemer is owned by family members indirectly through trusts that have been established for the benefit of family members and for the benefit of family entities that include a charitable trust. This is a common ownership structure for family offices and family investment entities.[7]

We understand the use of the term "indirectly" in the proposed text of Subsections (b)(2) and (d)(2)(v) to include ownership indirectly through trusts. We suggest this be made more clear by revising the phrase to include the words "or for the benefit of" and expressly permit ownership in part by family charitable trusts and foundations so that this language would read: "***wholly owned and controlled (directly or indirectly) by or for the benefit of family members or foundations or charitable trusts established by family members***".

5) Residual and Future Interests in Family Trusts

The Proposed Rule specifies that the permitted advisory clients of a family office are limited to "family clients." For a trust to qualify as a "family client," the trust must "exist[] for the sole benefit of one or more family clients."

Trusts created by individuals for their families have very long durations, spanning multiple generations. The trust instrument, and applicable trust and property laws, govern the beneficial ownership of a trust over a long period of time, and determine who has what right to the income and assets of the trust at a given point in time. The beneficial owners change over time based in part on events that occur after the trust is established. Trust instruments typically include clauses that under the right circumstances provide for the future distribution of income or property to persons or charitable organizations that are not lineal descendants of the settlor. This is frequently done to avoid application of state property laws that govern if the designated family beneficiaries do not survive and which would otherwise cause distribution of assets to distant relatives or escheat to the state.

The Proposed Rule is not entirely clear on what is meant by a trust "***existing for the sole benefit of***" family clients, but we understand the Proposed Rule to look to who at present is an income beneficiary of a trust or currently has use of the trust res to determine whether a trust qualifies as a "family client." This current ownership may be pursuant to a life estate or a term of years, and may or may not include a right to invade principal or include general powers of appointment. We suggest that the final rule clarify this point and make clear that future interests are not considered, regardless of whether they are vested or unvested, contingent or not. If this is not what is intended, many (and perhaps most) family trusts will not qualify as "family clients" and as a result will not be permitted to be serviced by family offices, own interests in family offices, or own family entities that are serviced by family offices. If the intent is to create a workable rule-based exemption, and not require a very large number of family offices to seek individual exemptive orders from

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[7] *Longview Management Group LLC*, Release Nos. IA-2008 (Jan. 3, 2002) and IA-2013 (Feb. 7, 2002); *Moreland Management Company*, Release Nos. IA-1700 (Feb. 12, 1998) and IA-1706 (Mar. 10, 1998); *In the Matter of Donner Estates, Inc.*, Release No. IA-21 (Nov. 3, 1941).

the Commission or choose to register under the Advisers Act, the rule will need to exclude future, contingent and residual ownership interests from a determination of the persons for whom a trust exists in establishing whether the trust is a permitted "family client."

6) Change in Ownership Through Involuntary Transfers

The Proposed Rule provides a period of four months for a family office to transfer servicing of a family client to a third party when there is a change in ownership due to an involuntary event such as a death or divorce. We believe that this is not a sufficient period of time to effect a transfer, particularly in situations requiring court approval, an accounting, notice periods, consents of beneficiaries or co-trustees, or other legal processes between the time of the involuntary event and the transfer to a third party. In our experience, the process for completing the transfer to a third-party trustee or manager after an "involuntary event" can take as long as eighteen to twenty-four months, and in some cases can take longer. We suggest that the final rule allow a period of at least a year after the completion of any required legal process for the completion of the process of effecting the transfer to a third party trustee or manager.

7) Pension and Employee Benefit Plans of the Family Office

Like other employers, family offices sponsor qualified and non-qualified pension and employee benefit plans for their own personnel. These plans are within the range of employee compensation arrangements normally provided by employers to their employees. These plans are established and operated by family offices to attract and retain qualified employees. Section 409(b)(2) of the Dodd-Frank Act specifies that the Commission should "recognize[] the range of ... employment structures and arrangements of family offices." Employee benefit and compensation programs of a family office would appear to be covered by this guidance from Congress. We suggest that the rule or related guidance from the Commission specify that a family office may sponsor and provide services to pension and employee benefit plans sponsored by the family office or its affiliates.

Employers provide various services to the pension and employee benefit plans they sponsor, such as servings as a plan trustee, designating other plan trustees and advisers, review and approval of investment options and reports of plan fiduciaries, and other functions that may in some sense be "investment advice" within the meaning of the Advisers Act. The Staff has stated on several occasions that typical employment relationships represented by pension and employee benefit plans are not the type of relationships that the Advisers Act was intended to address.[8] Because the Advisers Act has been amended to remove the exemption in Section 203(b) for an adviser with fewer than fifteen clients, it is important for the Commission to reiterate that plan sponsorship and

[8] *Lockheed Martin Investment Management Company*, SEC Staff Letter (avail. June 5, 2006); *Employer-Sponsors of Defined Contribution Plans*, Letter to U.S. Department of Labor, from Jack Murphy, Associate Director and Chief Counsel, Division of Investment Management (avail. Dec. 5, 1995 and Feb. 22, 1996).

normal plan servicing by an employer does not trigger registration under the Advisers Act, and further to state that family offices that sponsor and service their own pension and employee benefit plans can rely on the family office exemption from the Advisers Act.

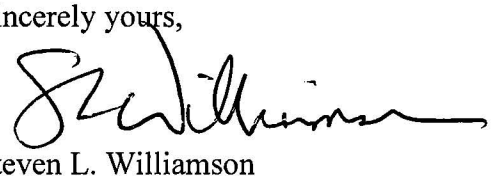
8) Who is a "Founder"

The Proposed Rule uses descent from a "founder" of the family office to define who can be an owner and a client of the family office. The term "founders" is defined in Subsection (d)(5) as the individual and spouse or spousal equivalent for whose benefit the family office was established. For many older family offices, the person who is viewed by the family as the patriarch or matriarch-- generally the person who generated the family wealth-- is no longer living. The family office may have been organized (or reorganized) after the death of the founder.

In order to cover the normal range of "founders" relationships to the family office, we suggest that the definition of "founder" make clear that (1) the exemption is not lost if the founder is no longer alive, (2) the exemption covers any reorganized or successor entities, and (3) the "founder" can be the person who created the family wealth, and need not have been alive or involved in organizing the family office to manage that wealth for the founder's family.

We appreciate the opportunity to comment on the Proposed Rule and your consideration of our comments.

Sincerely yours,



Steven L. Williamson