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November 17, 2010

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

Re: File No. S7-25-10
Comments on Family Office Proposed Rule

Dear Ms. Murphy:

We appreciate the opportunity to comment on proposed Rule 202(a)(11)(G)-1 (the "Proposed Rule") under the Investment Advisers Act of 1940, as amended (the "Advisers Act") pursuant to Release No. 1A-3089 (the "Release").

We represent various family offices and employees thereof as well as many other registered and unregistered investment advisers. We support the general approach of the Securities and Exchange Commission (the "Commission") with respect to family offices as described in the Release, and respectfully submit the following comments related to "founders," "family clients," "key employees," "holding out" and involuntary transfers. As described below, in various areas we believe that the Proposed Rule can be made less restrictive without compromising the Commission's goals.

I. Family Members and Founders

Under the Proposed Rule, advisers to "family offices" would be exempt from registration under the Advisers Act. A "family office" is defined, generally, as a company that, with certain exceptions, has only "family clients." The term "family clients" includes "family members" as well as key employees, certain charities, trusts or estates existing for the sole benefit of one or more family clients, entities wholly owned and controlled exclusively by and operated for the

sole benefit of one or more family clients, and former family members and former key employees with respect to investments made prior to the change in status.

In defining "family member," the Commission has adopted the "founder" as a reference point. "Founder" is defined as the "natural person" "for whose benefit the family office was established" and such person's spouse or spousal equivalent. As observed by other commenters, however, family offices are often established by persons other than the earliest ancestor who initially acquired the family's wealth. Often the family office is established by one or more of the second or third generation descendants. The accession of wealth by the "founder" may have preceded the creation or widespread use of the family office model. The "founder" may have transferred some of his or her wealth to one or more siblings or cousins through lucrative employment or equity arrangements, so that some members of the later generations may not be descendants of the actual "founder."

We therefore respectfully suggest that the Commission adopt a definition of "family" that is not dependent upon a single founder. We suggest that the definition of family member be something closer to a member of a group of individuals each of whom is related to a common ancestor/descendant (whether or not such person established the family office or acquired the family wealth) by blood, marriage or adoption. Even if this definition results in a sizeable pool of possible members, it is still a single "family" and we submit that there is little federal regulatory interest in requiring registration by the adviser.

As the Commission has observed, in the digital era fortunes can be amassed at a very young age. The current definition of family member would unnecessarily exclude grandparents of the "founder." We believe that stepchildren ought to be included within the term "family member," without further condition, to reflect the reality of so many wealthy and non-wealthy families.

In general, family offices should not be compelled to choose between excluding from the benefits of sophisticated, centralized wealth management persons who are obviously part of the same "family," as that term is usually understood, or incurring significant regulatory burdens and loss of privacy. We believe that the current definitions would lead to a flurry of requests for exemptive orders.

The Proposed Rule appropriately includes certain charitable foundations, charitable organizations and charitable trusts as family clients. However, we strongly disagree with the notion that such organizations must be established and funded "exclusively" by one or more family members. Historically, the families establishing family offices have been leading benefactors of charitable institutions in this country. Discouraging charitable contributions by making it difficult for family offices to manage a charity's assets does not serve the public interest. For example, suppose that two partners in a successful business who are not related by

blood or marriage wish to start a foundation. Under the Proposed Rule, neither partner's family office could manage any of the foundation's assets without registering under the Advisers Act. We propose instead that a different numerical test be employed. For example, the Rule could provide that any charity funded at least 25% by family members be eligible for management by the family office. Again, we do not see how permitting the family office to manage the assets of a charity which is closely associated with a family member would turn the family office into a "commercial" manager.

II. Key Employees

The Commission has appropriately recognized the importance to family offices of recruiting, retaining, incentivizing and aligning the interests of "key employees," now defined so as to include (i) an executive officer, director, trustee, general partner, or person serving in a similar capacity, or (ii) any other employee (excluding clerical, secretarial or administrative functions) who regularly participates in the investment activities of the family office, or substantially similar functions or duties for or on behalf of another company, for at least twelve months. We generally agree with the approach of effectively adopting the "Knowledgeable Employee" definition contained in Rule 3c-5 promulgated under the Investment Company Act of 1940, as amended. Key employees are by definition sophisticated persons who hardly need the benefits of Advisers Act registration. In fact, the individuals charged with compliance by the registered adviser would be the very same key employees.

We believe that certain of those employees now potentially not qualifying as "key employees" should nevertheless qualify for the same treatment. Employees who meet the standard of an "accredited investor" under Rule 501 of Regulation D (even when not "executive officers") should have sufficient sophistication and resources to protect themselves. Also, we request clarification as to non-executive "administrative" employees, who are now excluded. For example, would a controller (who is not the chief financial officer) qualify? Or the individual in charge of (family) investor relations? We assume that guidance previously provided by the Commission as to who is an "executive officer" under Regulation D would apply to the Proposed Rule as well.

We believe, as is the case with Knowledgeable Employees, that the donee or the estate of a key employee should be allowed to retain an interest in the family office. Also, since the key employee is able to protect the interests of his or her family members, members of the immediate family of the key employee, whether or not donees, and trusts and similar entities formed for the benefit of such persons, should be allowed to invest with the family office as well. We see no basis for only including spouses with community property rights. Such a restriction does not reflect the reality that most spouses and their children are essentially a single economic unit, regardless of the state of residence.

In our view it would be much too disruptive to require terminating employees to remove their investments and the returns thereon, from the family office, especially if the termination is unexpected. Such rapid withdrawals from family office investments may present liquidity obstacles, particularly where private equity or similar investments have been made. If the Commission concludes that it is necessary to preclude "new" investments by former employees, we still believe that returns on existing investments should be able to be re-invested; otherwise there will be much confusion whenever there is a dividend or partial liquidation event.

Having the key employees and their families be able to invest within the family office structure does not, in our view, make the family office adviser any more "commercial." The investors are all within a closely associated group closely bound by consanguinity and employment relationships.

III. Holding Out

The Commission proposes to prohibit an exempt family office from "holding out to the public as an investment adviser." We respectfully submit that this restriction has no utility in this context. That restriction was intended to make sure that advisers relying upon Section 203(b) of the Advisers Act were in fact "private" advisers. Family offices are private advisers by definition – the universe of clients is extremely limited.

Adopting the "holding out" restriction creates unnecessary headaches. Some advisers may wish to register their trademarks, for example, but this could be deemed "holding out" because trademark registration involves affirming use of the mark in "interstate commerce." Advisers may wish to have non-password protected websites designed for potential employees or others – again, the adviser should not have to worry about "holding out."

IV. Involuntary Transfers

Involuntary transfers by family members raise many issues. Here again we respectfully submit that public policy is not served by severely restricting the class of transferees. We believe that the Commission should distinguish between the types of involuntary transfers.

Under the Proposed Rule, in order for the family office to continue to manage the assets, the transferee must be a family member. In the Knowledgeable Employee context, however, the transferee's estate and any donee is an acceptable transferee. We believe that is an appropriate standard. Donees and legatees who are not family members or charitable institutions would be fairly rare, and we do not believe that allowing beneficiaries who are friends rather relatives to have the assets remain within the family office umbrella will undermine the Rule.

We would not object to the family office being required to disassociate from non-family member transferees upon foreclosure or bankruptcy. However, the four-month period is in our experience inadequate. We suggest a two-year transition period to avoid hardship.

If the Commission is concerned that the exemptions and exceptions, taken together, may result in family offices managing the assets of too many persons who are not family members, the Commission could consider adopting a reasonable numerical limit for persons who are not family members, key employees (and immediate family) and "affiliated" charitable institutions.

We hope that the Commission finds the above helpful and we are always available to clarify any of our thoughts.

Very truly yours,

Martin D. Sklar