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Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-1090

RE: COMMENTS TO FILE NUMBER S7-25-10; PROPOSED RULE 275.202(a)(11)(G)-1

Dear Commissioner:

This letter is in response to your request for public comments to proposed rule 275.202(a)(11)(G)–1 (the "Proposed Rule").

I. Background

We represent married individuals ("Husband and Wife") who own 100% of a "family office" structured as a limited liability company (the "Family Office"). The Family Office in turn provides investment advice to and manages assets for Husband and Wife, children of Husband and Wife, and a limited partnership (the "Partnership"). The Partnership is owned by Husband and Wife, trusts created for the benefit of Husband and Wife's children (and more remote descendants), and a donor-advised fund, the advisers of which are Husband and Wife (please note that the concept of a donor-advised fund is more fully described in Section V below). The donor-advised fund currently owns less than 0.4% of the Partnership. The Partnership is controlled by an entity wholly owned by Husband and Wife.

We have reviewed the comments to the Proposed Rule submitted by the Lowenstein Sandler law firm pursuant to a letter dated November 12, 2010 (the "Lowenstein Letter"). We agree with many of their arguments and reasoning in favor of amending certain provisions of the Proposed Rule, specifically the arguments set forth on page 7 of such letter regarding the cost and inconvenience factors associated with seeking exemptive relief from the Commission. Accordingly, by way of reference thereto, we incorporate such arguments and reasoning set forth in the Lowenstein Letter herein and urge you to again consider the same in reviewing our comments as set forth below.

II. Time Period Following the "Involuntary Transfer" of Assets

The Proposed Rule provides that a person shall be deemed to be a family client "for four months following the transfer of assets resulting from the involuntary event," and an "involuntary event" includes the death of a family member or key employee. When such a person dies, their assets must go through an estate administration process before the assets can be transferred to the person's heirs. Utilizing such a short time frame ignores the reality of the process of an estate administration and the amount of time involved in such a process. A four month window is simply not a long enough time period in which to wind up the estate of a decedent, especially when an estate tax return must be filed.

An individual's Form 706 – Estate Tax Return (the "Return") is not due until nine months after the decedent's date of death, and in most cases the deadline is extended until fifteen months after the decedent's date of death because of the time required to gather all of the asset data and obtain valuations for all of the assets. Even after the Return is filed, the assets are normally not distributed to the decedent's heirs until the executor has received (a) a closing letter from the IRS, or (b) in the event of an audit by the IRS, confirmation that the amounts set forth in the Return have been "finally determined" for estate and gift tax purposes, both of which often take years. Accordingly, we propose that the time frame set forth in the Proposed Rule be revised to read as follows: a person shall be deemed to be a family client for purposes of the Proposed Rule "for a period equal to the greater of (a) two years following the transfer of assets resulting from the involuntary event, or (b) in the event an estate tax return is required to be filed after the involuntary event, six months following the date that the amounts set forth in such return become "finally determined" for estate and gift tax purposes (as defined in Section 2001(f) of the Internal Revenue Code)." Due to the inevitable complexities of the estate administration of a family member or key employee, we feel such a time frame is a much more reasonable time period in which to transition assets after an involuntary transfer. Therefore, we propose the following:

<u>Sample Proposed Revision to Section (b)(1) of the Proposed Rule</u>:

> *(1) Has no clients other than 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 other key employee or other involuntary transfer from a family member or key employee, that person shall be deemed to be a family client for a period equal to the greater of (a) two years following the transfer of assets resulting from the involuntary event, or (b) in the event an estate tax return is required to be filed after the involuntary event, six months following the date that the amounts set forth in such return become "finally determined" for estate and gift tax purposes (as defined in Section 2001(f) of the Internal Revenue Code).*

III. Clarification of the Definition of "Trusts" Within the Family Client Context

The Proposed Rule provides that a "family client" includes "any trust or estate existing for the sole benefit of one or more family clients." In many instances, a trust existing for family clients during a certain time period may ultimately be distributed to a remainder beneficiary which is not a family client (e.g. a public charity) or the trust may have contingent beneficiaries who do not meet the definition of a family client. We believe the language "for the sole benefit of one or more family members" should be clarified to ensure that a trust currently benefitting family clients will not be disqualified as a family client because the trust has remainder or contingent beneficiaries that are not family clients. Therefore, we propose the following:

Sample Proposed Revision to Section (d)(2)(iv) of the Proposed Rule:

> *(iv) Any trust in which one or more family clients are the only beneficiaries currently eligible to receive distributions from such trust or any estate existing for the sole benefit of one or more family clients.*

IV. Clarification of Inclusion of Trusts as "Family Members"

The Proposed Rule requires a family office to be wholly owned and controlled by "family members." "Family members" include the founders, the founders' descendants and their spouses (or spousal equivalents), parents of the founders, siblings of the founders, such siblings' spouses (or spousal equivalents), and lineal descendants of such siblings and their spouses (or spousal equivalents). The definition of a family member in the Proposed Rule should be expanded to include any trust for the sole benefit of one or more family members and any estate existing for the sole benefit of one or more family clients.

In many cases, once the founders have passed away, their interest in the family office will no longer be owned by a natural person. This is the case because many wealthy individuals transfer *all* of their assets into a trust(s) for the benefit of their descendants. That being said, the definition of a "family member" should be expanded to include any trust or estate as described above, and in addition, the Proposed Rule should clarify that so long as the trust is for the sole benefit of one or more family members, the person or entity named as trustee of such trust should in no way be determinative of whether such trust meets the definition of a family member. This assertion is reasonable since the trustee has a fiduciary duty to act in the best interest of the beneficiary(ies), and in many cases, the beneficiary(ies) may be under a legal disability or incapable of managing the trust's assets. Therefore, we propose the following:

Sample Proposed Addition as Section (d)(3)(iv) of the Proposed Rule:

> *(iv) Any trust in which one or more family members are the only beneficiaries currently eligible to receive distributions from such trust or any estate existing for the sole benefit of one or more family clients; provided that if a person that is not a family client is a beneficiary of any such estate as a result of the death of a family member or other key employee (an "involuntary event"), that person shall be deemed to be a family client for a period equal to*

> *the greater of (a) two years following the transfer of assets resulting from the involuntary event, or (b) in the event an estate tax return is required to be filed after the involuntary event, six months following the date that the amounts set forth in such return become "finally determined" for estate and gift tax purposes (as defined in Section 2001(f) of the Internal Revenue Code).*

V. Donor-Advised Fund Included as "Family Client"

The definition of a "family client" in the Proposed Rule includes a charitable foundation established and funded exclusively by one or more family members. However, in many cases, a family may forego establishing a charitable foundation and instead make charitable contributions to a donor-advised fund. A donor-advised fund is a separately accounted for charitable giving fund administered by a public charity, as defined in Section 509(a) of the Internal Revenue Code (the "Administering Charity"). The donor, or members of the donor's family, serve as the fund's adviser(s). The adviser is given the right at any time to request that distributions be made from the fund to charities designated by the fund's adviser. The Administering Charity will grant the request only if the designated charity is deemed suitable by the Administering Charity.

Generally, the Administering Charity will hire its own investment advisers. In the situation described above, the donor-advised fund will hold an interest in a privately held business (the "Underlying Entity"), the other owners of which are family clients. When the Underlying Entity makes distributions, a pro rata portion would pass to the donor-advised fund. These amounts would be held in the donor-advised fund and would be available for distributions to charities designated by the fund's adviser and deemed suitable by the Administering Charity.

The practical effect of including donor-advised funds as a family client would allow the family office to continue to give investment advice to the Underlying Entity. Note that neither the Administering Charity's general funds nor any other donor-advised funds held by the Administering Charity will be affected by the investment performance of the Underlying Entity.

Donors of a donor-advised fund enjoy administrative convenience, cost savings and tax advantages by conducting their charitable giving through such a fund. Furthermore, as noted above, assets in the donor-advised fund are accounted for separately from the Administering Charity's other assets. Thus, a donor-advised fund functions in many ways as a private foundation substitute. We recommend that the definition of "family client" be expanded so that it is clear that a donor-advised fund created by family members and advised by family members is included within the definition of a family client. Therefore, we propose the following:

<u>Sample Proposed Revision to Section (d)(2)(iii) of the Proposed Rule</u>:

> *(iii) Any charitable foundation, charitable organization, or charitable trust, in each case established and funded exclusively by one or more family members or former family members, and any*

> *donor-advised fund created and advised by one or more family members or former family members.*

VI. Exception to the Requirement of a *Wholly* Owned Entity Within the "Family Client" Context

The requirement that an entity be *wholly* owned by one or more family clients in order to meet the definition of a family client and in turn qualify for the exemption as a family office under the Proposed Rule is too restrictive. In many instances, an entity (e.g. a limited partnership or a limited liability company) may not be wholly owned and controlled by one or more family clients such as when a public charity has received a gift of an ownership percentage in such entity as a donation. Such a gift may be held by the public charity for a short-term period or a long-term period and allows the public charity to benefit from the growth of the entity's assets during such holding period. In this scenario, the public charity would typically be one to which the family members are emotionally attached.

We strongly urge you to consider an exception that would allow the family office to provide services to and manage assets for an entity which is not wholly owned by one or more family clients. We recommend a twenty percent (20%) threshold for determining such exception, provided that such interests were obtained without any consideration (i.e., a gift). So long as (a) the non-family client owns less than a twenty percent (20%) interest in the entity, and (b) the entity is controlled completely by family clients, such an ownership interest in the entity should not disqualify it from continuing to be defined as a family client for purposes of the Proposed Rule. You note in your discussion of the Proposed Rule that the key to the Proposed Rule is that it was not designed to regulate the interactions of family members in the management of their own wealth, and without the inclusion of such an exception, many families will be unfairly penalized for simply managing their own wealth. Therefore, we propose the following:

Sample Proposed Revision to Section (d)(2)(v) of the Proposed Rule:

> *(v) Any limited liability company, partnership, corporation, or other entity wholly owned by one or more family clients and which is controlled (directly or indirectly) exclusively by one or more family clients; provided that such entity shall be deemed wholly owned by one or more family clients if at least eighty percent (80%) of such entity is owned by one or more family clients and the remaining interests are owned by one or more non-family clients who received such interest without any consideration therefor (i.e., a gift), and provided further 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.*

VII. Expansion of the Definition of "Family Members" to Include Individuals Who Share a Common Grandparent

We propose that the definition of a family member be expanded to include individuals who share a common grandparent. While it is imperative that the definition of a family member include parents, siblings, spouses and descendants of the founders, it has been our experience that a family's wealth may have been created at a founder's grandparent's generational level, but the family office may not have been established until the founder's generational level after a liquidity event, in which case aunts, uncles and cousins may want to come together to establish a family office to manage the family's wealth (in addition to those individuals already included within the definition of a family member). Revising the definition of a family member to include those individuals who share a common grandparent would guarantee the inclusion of the appropriate persons within the definition of a family member for purposes of the Proposed Rule. Therefore, we propose the following:

Sample Proposed Revision to Section (d)(3)(iii) of the Proposed Rule:

> *(iii) All natural persons who share a common grandparent with the founders and the spouses (or spousal equivalents) of such persons.*

VIII. Conclusion

We believe our proposed revisions to the Proposed Rule (as outlined above) will reduce the substantial fees and expenses to be incurred by a family office in connection with the exemptive order process where family offices are not excluded from the definition of an "investment adviser" under the Investment Advisers Act of 1940. In addition, such revisions should reduce the time and effort to be expended by the Commission in reviewing and responding to individual exemption requests.

Respectfully submitted,

Marvin E. Blum

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