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November 18, 2010

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

Re: Proposed Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940
File Number S7-25-10

Dear Ms. Murphy:

We represent a large, multi-generation, single family office that wishes to comment on certain aspects of proposed Rule 202(a)(11)(G)-1 (the "Proposed Rule) under the Investment Advisers Act of 1940. The extended family that controls the family office has asked this firm to provide the Commission with comments to the Proposed Rule on its behalf, as it believes that providing comments directly to the Commission might compromise its privacy, including publicly revealing the manner by which it conducts its family office business.

While our family office client (and the family that controls that office) generally supports the Proposed Rule, it has asked us to relay to you several comments that the family believes the Commission should consider prior to adopting a final rule.

Section (b)(2) of the Proposed Rule is Too Narrow and Does Not Take Into Account the Myriad Ways in Which a Family Office Can Structure Itself

In the Commission's Proposing Release, the Commission stated that, to rely upon the Proposed Rule, a family office must be "wholly-owned and controlled, either directly or indirectly, by family members." While our client believes that the underlying policy rationale that the Commission posed for proposing this definition - to rely upon the family office exemption, a family should be in a position to protect its own interests and thus would be less likely to need the protection of the federal securities laws – is sound, our client nevertheless believes that the Commission's proposed language is too narrow. Namely, our client does not believe that the definition takes into account the myriad ways in which a family office can structure itself, particularly a large, multi-generation family office whose structure has evolved around estate and family planning purposes that the Commission might not have considered when crafting this section of the Proposed Rule.

With specific regard to our client, the ultimate owners of its family office business include trusts that the family established many years ago, and whose primary beneficiaries are family members. However, the trustees of those trusts generally are not family members. Our family office client established this structure because of its long-standing practice to name an independent trustee for these trusts instead of a family member to avoid having the assets of the trust included in the estate of the grantor, and for other family planning purposes.

Because the trustees of these trusts are not family members, an argument could be made that the family does not control the family office since the independent trustees theoretically could take actions with regard to the trusts that are inimical to the interests of the family. While the family believes that the trustees never would take any such action, under section (b)(2) of the Proposed Rule, the family office possibly might not be able to avail itself of the exemption from the definition of investment adviser because of the narrow scope of this provision. Moreover, our client believes that it is a fairly common practice for similarly-situated family offices to appoint non-family members, or a private trust company, [1] to serve as trustee of a trust or trusts that may own the family office.

Our client does not believe that the Commission meant to preclude a family office from relying on the Proposed Rule under these types of circumstances. While our client is aware that they (and other similarly-situated families) could seek exemptive relief to cover this specific circumstance if the Proposed Rule is adopted as proposed, because the family believes that numerous other family offices have similar ownership structures, the family has asked us to convey to you its view that it would be more expedient for the Commission to broaden section (b)(2) of the Proposed Rule rather than possibly considering numerous exemptive application filings. Accordingly, the family believes that the language of section (b)(2) of the Proposed Rule should be changed as follows (marked to show proposed changes):

(2) Is wholly-owned and controlled (directly or indirectly) by family members, <u>including through a trust or trusts that family members have established and whose primary beneficiaries are family members, but whose trustee (or trustees) may not be a family member</u>.

As an alternative, the Commission simply could indicate in its adopting release that the term "control" under this provision includes circumstances where the family office is owned by one or more trusts, including a trust, the trustees of which do not include a family member, so long as the trust has been established by the family and its primary beneficiaries are family members.

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[1] For those circumstances where a private trust company serves as trustee to such a trust, the board of directors of that private trust company - which generally includes non-family members for many of the same reasons that independent trustees are named for other trusts, and which may be required by state laws governing trust companies - could then be deemed to control the family office.

The Limitations the Commission Proposes to Impose on Family Offices Relating to the Provision of Investment Advisory Services to "Former Key Employees" and "Former Family Members" Likewise are Too Narrow and Do Not Take Into Account the Types of Investments that Such Individuals Might Have Made with the Family Office Prior to Their Separation.

In the Proposed Rule, the Commission included in its list of "Family Clients" former key employees and former family members. However, the Commission proposed to limit a family office from providing investment advice to those individuals upon their separation from the family office, 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 key employee][former family member], except that a [former key employee][former family member] shall be permitted to receive investment advice from the family office with respect to additional investments that the [former key employee][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 key employee][former family member].

Our client generally agrees with the Commission's attempt to take into account the complicated and long-standing relationships that exist between former key employees and former family members; however, our client believes that the Commission's proposed language is too narrow and constricting.

First, our client believes that the Commission should delete the term "immediately" in sections (d)(2)(vi) and (d)(2)(vii) of the Proposed Rule. That term connotes that the advice the family office provided to these individuals was given just prior to the separation of these individuals from the family. However, while that could be the case, it is more likely that the specific advice that the family office provided to such individuals could have been given months or years prior to the time of the separation, and thus might cause permitted, post-separation advice not to qualify for the exception.

Second, our client believes that the Commission's proposed restriction on a family office providing investment advice to a former key employee or former family member on additional investments except for additional investments the individual is contractually obligated to make does not recognize the serious harm that could befall such an individual if he/she is precluded from the family office's advice on follow-up investments that he/she is not contractually obligated to make. Namely, our client believes that there are a variety of circumstances other than when an individual is contractually obligated to make an investment where it would be harmful to that individual to be precluded from receiving additional advice from the family office. For example, the former key employee or former family member might have invested on the advice of the family office in a company prior to his/her separation that now is involved in a

secondary financing. Because there might be no contractual obligation to participate in that financing, the individual could be harmed, or his/her original investment unnecessarily diluted, if the family is unable to provide investment advice to that individual on the financing. In addition, the family might have permitted such an individual to invest in a private company that the family had acquired, or that the family currently operates or controls. For follow-up investment opportunities in such investments, because the family has all the information relating to that investment opportunity, the individual would not have any source of information to judge the wisdom of making a follow-up investment, and thus the Proposed Rule as currently drafted could severely handicap or financially harm that individual.

Accordingly, our client suggests that the Commission delete the phrase in each of section (d)(2)(vi) and (d)(2)(vii) of the Proposed Rule " . . . . that the former [key employee][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 . . ." and substitute the following: "that relates to specific investment advice that the former [key employee][family member] received from the family office prior to the time the person became . . ." Our family office client believes that this substitution is consistent with the policy that the Commission is trying to enforce – permitting a family office to provide advice to non-family members only under limited circumstances – but takes into account the complicated types of investments that such an individual might have made on the advice of the family office prior to his/her separation from the family.

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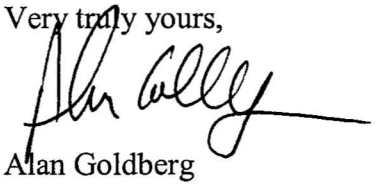
Finally, with regard to the Commission's request for comments on whether "we should rescind previous orders granted to family offices under section 202(a)(11)(G) of the Advisers Act," our client firmly believes that those existing orders should not be rescinded. Our client does not believe that previous Commission action upon which families have been relying should be abrogated – there would be no public policy rationale to do so, particularly because the conditions and requirements in the Proposed Rule and those previous orders are substantially aligned.

We very much appreciate the Commission's consideration of the above comments on behalf of our family office client. Please do not hesitate to contact the undersigned if you have any questions.

Very truly yours,



Alan Goldberg