

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 1 TO THE
APPLICATION FOR AN ORDER UNDER SECTION 202(a)(11)(H) OF THE
INVESTMENT ADVISERS ACT OF 1940 (“ADVISERS ACT”)
DECLARING THE APPLICANT TO BE A
PERSON NOT WITHIN THE INTENT OF THE ADVISERS ACT

L.R. Burtschy & Company
332 East Bay Street
Charleston, SC 29401

All communications, notices, and orders to:

Daniel G. Viola, Esq.
c/o Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176

This Amendment No. 1 to the Application (including Exhibits) consists of 15 pages.

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

In the Matter of)
)
)
) AMENDMENT NO. 1 TO THE
) APPLICATION FOR AN ORDER UNDER SECTION
) 202(a)(11)(H) OF INVESTMENT ADVISERS ACT OF 1940
) DECLARING THE APPLICANT TO BE PERSONS NOT
) WITHIN THE INTENT OF THE ADVISERS ACT
L.R. Burtshy & Company)
332 East Bay Street)
Charleston, SC 29401)
)
File No. – 803-00249)

L.R. Burtshy & Company, an Ohio domiciled corporation (the "Office" or the "Applicant"), hereby files this Amendment No. 1 to the Application ("Application") for an Order of the Securities and Exchange Commission ("Commission") under Section 202(a)(11)(H) of the Investment Advisers Act of 1940 ("Advisers Act") declaring the Office to be a person not within the intent of the Advisers Act to the extent that the Office cannot satisfy all of the conditions to be a "family office" (as defined in Commission Rule 202(a)(11)(G)-1 the "Family Office Rule") under the Advisers Act if the Office were to add an additional family member client. For the reasons discussed below, the Office believes that the Order requested is fully consistent with the policies and purposes of the Advisers Act and the Family Office Rule.

I. BACKGROUND

A. The Office

The Office, located at 332 East Bay Street, Charleston, South Carolina 29401, is a multi-generational single-family office which provides or intends to provide services to the family and descendants of John Hillenbrand ("Common Ancestor"). The Office is wholly owned by family, clients, as defined by the Family Office Rule, primarily by a granddaughter, grandson-in-law and great

grandson of the Common Ancestor. For purposes of this Amendment No. 1 to the Application, the "Burtschy Family" or "Family" means and refers to the lineal descendants of Common Ancestor, their spouses or spousal equivalents, and other persons and entities that qualify as "Family Clients" as defined in paragraph (d)(4) of the Family Office Rule. Capitalized terms used but not otherwise defined in this Amendment No. 1 to the Application shall have the meanings assigned to such terms in the Family Office Rule.

The Office provides or intends to provide both advisory and non-advisory services (collectively, the "Services") to members of the Burtschy Family. The Services generally consist of the allocation advice, investment due diligence and investment management; assistance with recordkeeping, cash management, federal and state tax preparation, financial accounting, and bill payment; coordination of professional relationships with accountants, attorneys, as well as numerous other responsibilities. Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service". The Advisory Service generally consists of services provided by the Office that relates to investment advice about securities or may otherwise be construed as advisory in nature. The approximate percentage of Family Members who are natural persons to whom the Office currently provides Advisory Services to is 80%.

Currently, the Office complies with all of the general conditions of the Family Office Rule for exclusion from the definition of "investment adviser" and regulation under the Advisers Act, including: (i) each of the persons served by the Office is a Family Client (*i.e.*, the Office has no investment advisory clients other than the Family Clients as required by paragraph (b)(1) of the Family Office Rule); (ii) the Office is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule, and (iii) the Office does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule.

B. Additional Family Clients

In addition to the Family Clients, the Office desires to continue providing Services (including Advisory Services) to the sister-in-law and brother-in-law of the Common Ancestor's granddaughter (the "Additional Family Clients"). The Office estimates that the Additional Family Clients' assets that are managed by the Office represent approximately seven percent (7%) of the Office's assets under management. The Additional Family Clients do not have an ownership interest in the Office. In addition, the Office has provided Services, including Advisory Services, to the Additional Family Clients since before 1967. Family Members (excluding the Additional Family Clients) will account for at least ninety percent (90%) of the assets for which the Office provides Advisory Services.

The sister-in-law and brother-in-law of the Common Ancestor have important familial ties to and are an integral part of the Burtschy Family. They have been considered and treated as close family members of the Burtschy Family for the purposes of intra-familial affection, trust, and communications for over 50 years. They are invited to and welcome at every family gathering surrounding birthdays and appropriate religious and secular holidays, and attend those events that are convenient. In turn, they consider the other members of the Burtschy Family to be immediate

family, with the attendant intra-familial affection, trust, and respect. The members of the Burtschy Family that manage the Office believe that they have the same kind of standard of care and loyalty to the Additional Family Clients as they believe they owe to the other members of the Burtschy family. Therefore, including the Additional Family Clients into the definition of "family" for this purpose simply recognizes and memorializes the familial ties and inter-familial relationships that already exist, and have existed for over fifty (50) years. If the relief requested in this Amendment No. 1 to the Application is granted, the inclusion of the Additional Family Clients as members of the Burtschy Family for which the Office may provide services would be consistent with the existing familial relationship among the family members.

II. REQUEST FOR AN ORDER

Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "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 ... "

The Office falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Office is currently eligible but would no longer qualify if the Office provides Advisory Services to the Additional Family Clients. Because the Family Office has regulatory assets under management of more than \$100 million, it is not prohibited from registering with the Commission under Section 203A(a) of the Advisers Act.

In sum, absent relief, the Office would be required to register under Section 203(a) of the Advisers Act, notwithstanding that (i) the Office does not hold itself out to the public as an investment adviser and does not market non-public offerings to persons or entities that are not Family Clients, (ii) the Office is wholly owned and controlled by members of the Burtschy Family, in accordance with paragraph (b)(2) of the Family Office Rule; and (iii) the Office is a "family office" for the Burtschy Family and will not offer its Advisory Services to anyone other than Family Clients and the Additional Family Clients. The Office requests that the Commission issue it an Order pursuant to Section 202(a)(11)(H) declaring it not to be a person within the intent of the Advisers Act.

III. DISCUSSION

A. Relationship with the Additional Family Clients Does Not Change the Nature of the Office to that of a Commercial Advisory Firm

The proposing release for the Family Office Rule states that in defining the term "family member," the Commission sought to distinguish between offices that serve members of a single family and those

family-run offices that serve multiple families and are more commercial in nature¹. However, the adopting release for the Family Office Rule clarified that the Advisers Act was not designed to "regulate the interactions of family members in the management of their own wealth" or apply to family offices that are "unlikely to involve commercial advisory activities."²

The Office submits that its proposed relationship with the Additional Family Clients does not change the nature of the family office into that of a commercial advisory firm. The Office believes that its circumstances are consistent with the rationale of the Family Office Rule described in the Proposing Release and Adopting Release. The Office has for some time provided services to the Additional Family Clients who do not fall within the definition of Family Member, but who for the last 52 years and to this day were and continue to be considered and treated as members of the Burtschy Family. For example, these individuals continue to include each other in important family events (such as weddings), celebrate holidays and vacation together. In addition, if the sister-in-law and brother-in-law were the siblings of a lineal descendent of Common Ancestor, rather than a sibling of a spouse of a lineal descendent, there would be no question that each of them would be a Family Member, and their assets would similarly fall within the definition of Family Client. In requesting this Order, the Office is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. The number of natural persons who are not Family Members as a percentage of the total natural persons to whom the Office would provide Advisory Services if relief were granted would be approximately twenty percent (20%). The Office estimates that the Additional Family Clients' assets that are managed by the Office represent approximately seven percent (7%) of the Office's assets under management. Rather, from the perspective of the Burtschy Family, allowing the Office to provide Services to them is consistent with the Family's previous experience with investment management services provided by the Office and the existing familial relationship among Burtschy Family members. The Office believes that none of the concerns the Commission mentioned in the Proposing Release and Adopting Release regarding an overly broad application of the Family Office Rule would materialize if the Office received the Order requested herein. The granting of the relief requested herein simply will enable the Office to provide Advisory Services to this limited universe of those the Burtschy Family considered to be family members - those to whom the Office has been providing Services for over fifty (50) years. Therefore, the Office is requesting that the Commission declare the Additional Family Clients to be members of the Burtschy Family for the purposes of the Family Office Rule.

In this circumstance, a Family Member has been providing Advisory Service to the Additional Family Clients for many years and wishes to continue to do so. The Office also estimates that the Additional Family Clients' assets that are managed by the Office represent approximately seven percent (7%) of the Office's assets under management.

¹ Family Offices, Investment Advisers Act Release No. 3098 (Oct. 12, 2010) ("Proposing Release").

² Id; see also, Family Offices, Investment Advisers Act Release. No. 3220 (June 22,2011) ("Adopting Release")

B. There Is No Public Interest in Requiring the Office to Be Registered Under the Advisers Act

The Office is a private organization that was formed to provide both financial and non-financial related services to the Burtschy Family. The Office's clients are comprised solely of Family Clients and, if the requested relief is granted, the Additional Family Clients. The Office does not have any public clients. The Office's Services are exclusively tailored to the needs of the Burtschy Family. The provision of Advisory Services to the Additional Family Clients does not create any public interest that would require the Office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a "family office" that complies in all respects with the Family Office Rule.

IV. PRECEDENT

The Commission issued family office exemptive orders prior to adoption of the Family Office Rule.³ Although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued to family offices, the Commission stated with respect to the definition of who is considered a "family client" that "[w]e have not included every type of individual or entity that has been included in a prior exemptive order based on specific facts and circumstances," and noted that "family offices would remain free to seek a Commission exemptive order to advise an individual or entity that [did] not meet [the] proposed family client definition."⁴ Since adoption of the Family Office Rule, the Commission has issued several family office exemptive orders based on applications similar to this Amendment No. 1 to the Application. Specifically, the Office believes that the following exemptive orders issued in recent years reflect circumstances comparable to those of the Office:

In May 2015, the Commission issued an exemptive order to D-W Investments LLC,⁵ a family office that provided advisory services to the sister-in-law of a spouse of a lineal descendant of the family's common ancestor and to an irrevocable trust of which the sister-in-law was a beneficiary. With the exception of the irrevocable trust, the fact pattern in D-W Investments LLC is almost identical to the fact pattern at issue here. Moreover, the fact pattern with respect to the Office is even less tangential in nature from the fact pattern laid out in D-W Investments LLC to whom the Commission, in fact, granted an exemptive order to.

³ See, e.g., *WLD Enterprises, Inc.*, Investment Advisers Act Release Nos. 2804 (Oct. 17, 2008) (Notice) and 2807 (Nov. 14, 2008) (Order); *Parkland Management Company, L.L.C.*, Investment Advisers Act Release Nos. 2362 (Feb. 24, 2005) (Notice) and 2369 (Mar. 22, 2005) (Order); *Longview Management Group LLC*, Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) (Notice) and 2013 (Feb. 7, 2002) (Order).

⁴ See Proposing Release at Section II.A. The Commission reiterated this point in the Adopting Release. In a discussion of who is considered a "family member," the Commission noted that "[g]uardianship arrangements for adults...are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability." See Adopting Release at n.34.

⁵ See, In the Matter of D-W Investments LLC, Investment Advisers Act Release No. 4066 (April 20, 2015) (Notice) and Release No. 4090 (May 19, 2015) (Order).

In January 2015, the Commission issued an exemptive order to William E. Simon & Sons LLC and New Vernon Advisors, Inc.,⁶ a family office that provided advisory services to the sibling of a former spouse of a lineal descendant of the family's common ancestor and a private foundation funded exclusively by the sibling.

In July 2014, the Commission issued an exemptive order to Gruss & Co. Inc.,⁷ a family office that provided advisory services to two sisters of a spouse of a lineal descendant of the family's common ancestor and each sister's respective spouse and children. In July 2014, the Commission issued an exemptive order to Duncan Family Office,⁸ a family office that provided advisory services to the mother-in-law of a spouse of a lineal descendant of the family's common ancestor and certain related foundations. In each of these exemptive orders, the Commission granted exemptions on facts that are comparable to the facts presented by the Office in this Amendment No. 1 to the Application, namely the ability to provide advisory services to relatives of the common ancestor who does not meet the definition of a Family Client under the Family Office Rule.

These orders recognize unique circumstances in which an entity provides advisory services to a slightly broader spectrum of individuals, but the entity remains focused on a single family's needs and its operations do not become commercial in nature. The same is true for the Office, which as described above in Section I, provides services to Family Clients and desires to provide Services to Additional Family Clients whose status as a client of the Office would not change the nature of the Office's operations to that of a commercial advisory business. As such, the Office believes that an exemptive order is appropriate based on the Office's specific facts and circumstances.

V. PROCEDURAL MATTERS

Pursuant to Rule 0-4(f) under the Advisers Act, the Office states that its address is indicated on the first page of this Amendment No. 1 to the Application. The Office further states that all written or oral communications concerning this Amendment No. 1 to the Application should be directed to:

Daniel G. Viola, Esq.
c/o Sadis & Goldberg LLP
551 Fifth Avenue, 21st Floor
New York, NY 10176
Email: dviola@sadis.com
Phone: (212) 573 - 8038

⁶ See, In the Matter of William E. Simon & Sons, LLC and New Vernon Advisors, Inc., Investment Advisers Act Release No. 3990 (December 22, 2014) (Notice) and Release No. 4001 (January 20, 2015) (Order).

⁷ See, In the Matter of Gruss & Co. Inc., Investment Advisers Act Release No. 3866 (July 1, 2014) (Notice) and Release No. 3883 (July 29, 2014) (Order).

⁸ See, In the Matter of Duncan Family Office, Investment Advisers Act Release No. 3867 (July 1, 2014) (Notice) and Release No. 3882 (July 29, 2014) (Order).

All requirements for the execution and filing of this Amendment No. 1 to the Application on behalf of the Office have been complied with and are in accordance with the corporate bylaws of the Office, and the undersigned officer of the Office is fully authorized to execute this Amendment No. 1 to the Application. The Office has adopted the Resolutions attached as Exhibit A authorizing the filing of the application. The Verifications required by Rule 0-4(d) under the Advisers Act are attached as Exhibit B and the Proposed Notice of the proceeding initiated by the filing of this application, required by Rule 0-4(g) under the Advisers Act, is attached as Exhibit C.

VI. REQUEST FOR ORDER OF EXEMPTION

For the foregoing reasons, the Office requests that the Commission issue an Order under Section 202(a)(11)(H) of the Advisers Act declaring it not to be a person within the intent of the Advisers Act, provided that the Office complies with the following conditions:

1. The Applicant will offer and provide Advisory Services only to Family Clients and to the Additional Family Clients, who generally will be deemed to be, and treated as if they were, Family Clients; provided, however, that the Additional Family Clients will be deemed to be, and treated as if they were, Family Members for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.
2. The Applicant will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Clients' Family Entities) as defined in paragraph (d)(5) of the Family Office Rule.
3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Clients' Family Entities) will account for at least 90% of the assets for which the Office provides Advisory Services.
4. The Company will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Amendment No. 1 to the Application.

The Company submits that the Order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

The Office submits that, pursuant to the authority granted to the Office's Officers, the undersigned, who has signed and filed this Amendment No. 1 to the Application on behalf of the Office, is fully authorized to do so.

Dated: October _____, 2019

L. R. BURTSCHY & COMPANY

By _____
Lawrence F. Burtschy
President

EXHIBIT A

**RESOLUTIONS OF L.R. BURTSCHY & COMPANY
AUTHORIZING APPLICATION FOR EXEMPTIVE ORDER WITH THE SEC**

WHEREAS, the President of L.R. Burtschy & Company, an Ohio domiciled corporation, deems it advisable and in the best interest of L.R. Burtschy & Company (the "Office") to submit an application with the Securities and Exchange Commission ("SEC") pursuant to Section 202(a)(11)(H) of the Investment Advisers Act of 1940 (the "Advisers Act"), or such other sections thereof or rules thereunder as may be necessary or appropriate, for an order or orders, or amended order or orders, declaring it to be a person not within the intent of the Advisers Act.

RESOLVED, that the President of the Office is authorized and directed to prepare, execute and file, or to cause to be prepared, executed and filed, with the SEC an application or applications pursuant to 202(a)(11)(H) of the Advisers Act, or such other sections thereof or rules thereunder as may be necessary or appropriate, for an order or orders, or amended order or orders, declaring it to be a person not within the intent of the Advisers Act.

RESOLVED FURTHER, that the President of the Office is authorized to take such further action, and to make such representations on behalf of the Office, in any matters relating to such application or any amendment thereto as he may approve as necessary or desirable.

IN WITNESS WHEREOF, the undersigned, Lawrence F. Burtschy, for L. R. Burtschy & Company, does hereby certify that that the foregoing resolutions were duly adopted by the Company on October 2, 2019.

Dated: October 2, 2019

L. R. BURTSCHY & COMPANY

By _____
Lawrence F. Burtschy
President

EXHIBIT C

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA -]

L.R. Burtschy & Company; Notice of Application

[Date]

Agency: Securities and Exchange Commission ("SEC" or "Commission").

Action: Notice of Application for Exemption under the Investment Advisers Act of 1940 ("Advisers Act").

Applicant: L.R. Burtschy & Company ("Applicant")

Relevant Advisers Act Sections: Exemption requested under Section 202(a)(11)(H) of the Advisers Act from Section 202(a)(11) of the Advisers Act. Summary of Application: Applicant requests that the Commission issue an order declaring it to be a person not within the intent of the Section 202(a)(11) of the Advisers Act, which defines the term "investment adviser."

Filing Dates: The application was filed on May 9, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on [DATE] and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Advisers Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549. Applicant, L.R. Burtschy & Company, c/o Lawrence F. Burtschy, 332 East Bay Street, Charleston, SC 29401

For Further Information Contact: [NAME(S), TITLE(S)], at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website either at <http://www.sec.gov/rules/iareleases.shtml> or by searching for the file number, or for an applicant using the Applicant name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

Applicant's Representations:

1. The Applicant is a multi-generational single-family office which provides or intends to provide services to the family and descendants of John Hillenbrand ("Common Ancestor"). The Applicant is The Company is owned, primarily by a granddaughter, grandson-in-law and great grandson of the Common Ancestor (direct lineal descendants of Common Ancestor). For purposes of this Amendment No. 1 to the Application, the "Burtschy Family" or "Family" means and refers to the lineal descendants of the Common Ancestor, their spouses or spousal equivalents, and other persons and entities that qualify as "Family Clients" as defined in paragraph (d)(4) of Rule 202(a)(11)(G)-1 (the "Family Office Rule"). Capitalized terms used but not otherwise defined in this Amendment No. 1 to the Application shall have the meanings assigned to such terms in the Family Office Rule.

2. The Applicant provides or intends to provide both advisory and non-advisory services (collectively, the "Services") to members of the Burtschy Family. Any Service provided by the Applicant that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service."

3. The Applicant represents that: (i) other than the exception discussed in representation 4 below, each of the persons to whom Services are or will be provided by the Applicant is a Family Client, i.e., the Applicant has no investment advisory clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule; (ii) the Applicant is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Applicant does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, the Applicant represents that there are approximately 11 Family Clients accounts for which the Applicant provides or will provide Services.

4. In addition to the Family Clients, the Applicant desires to provide Services (including Advisory Services) to two relatives of a lineal descendant of the Common Ancestor, the Additional Family Clients.

5. The Additional Family Clients do not have an ownership interest in the Applicant. The Applicant represents that the Additional Family Clients' assets that are managed by the Applicant, represent approximately seven percent (7%) of the Applicant's assets under management.

6. The Applicant represents that it has provided Services to the Additional Family Clients since prior to 1967. The Applicant also represents that the Additional Family Clients have important familial ties to and is an integral part of the Burtschy Family. The Applicant maintains that including the Additional Family Clients in the "family" simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for at least 50 years while the assets of the Additional Family Clients were managed by the Office.

Applicant's Legal Analysis

1. Section 202(a)(11) of the Advisers Act defines the term "investment adviser" to mean "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 ..."

2. The Applicant falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Applicant would be eligible but for its provision of Services to the Additional Family Clients.

3. The Applicant submits that its proposed relationship with the Additional Family Clients does not change the nature of the family office into that of a commercial advisory firm. Furthermore, the Applicant submits that it is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Clients do not fall within the definition of Family Member, they have been considered, and treated as, close members of the Family for many years.

4. The Applicant submits that there is no public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant is a private organization that was formed in order to provide Services to the Burtschy Family. The Applicant's clients are comprised solely of Family Clients and, if the requested relief is granted, the Additional Family Clients. The Applicant maintains that its Services are exclusively tailored to the needs of the Burtschy Family. The Applicant argues that the provision of Advisory Services to the Additional Family Clients, does not create any public interest in requiring the Applicant to be registered under the Advisers Act. The Applicant argues that the considerations raised by the Applicant and the Burtschy Family mirror those applicable to a family office that complies in all respects with the Family Office Rule.

5. The Applicant argues that, upon the adoption of the Family Office Rule, the Commission did not rescind exemptive orders previously issued before adoption of the Family Office Rule. In the Adopting Release to the Family Office Rule, the Commission stated that the scope of the

Family Office Rule is generally consistent with the conditions of the prior exemptive orders issued to family offices. The Commission noted that family offices would remain free to seek an exemptive order by the Commission to address certain unique situations. Since adoption of the Family Office Rule, the Commission has issued several family office exemptive orders based on applications similar to that of the Applicant. These orders recognize unique circumstances in which an entity provides advisory services to a slightly broader spectrum of individuals, but the entity remains focused on a single family's needs and its operations do not become commercial in nature.

6. For the foregoing reasons, the Applicant requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Applicant submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

The Applicant's Conditions

1. The Office will offer and provide Advisory Services only to Family Clients, as defined in paragraph (d)(4) of the Family Office Rule, and to the Additional Family Clients, as defined above; provided that if a person who is not a Family Client becomes a client of the Office as a result of any involuntary transfer from the Additional Family Clients, that person shall be deemed to be a Family Client for one year following the completion of the transfer of legal title to the assets resulting from the involuntary event.
2. The Office will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more members of the Burtschy Family and/or family entities as defined in paragraph (d)(5) of the Family Office Rule.
3. The Office will not hold itself out to the public as an investment adviser.
4. At all times assets beneficially owned by Family Clients, as defined in the Family Office Rule, will account for at least ninety percent (90%) of the assets for which the Office provides Advisory Services.
5. The Office will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Amendment No. 1 to the Application.