22 July 11, 2003

VIA E-MAIL

Financial Crimes Enforcement Network
United States Department of Treasury
P.O. Box 39
Vienna, Virginia 22183-1618

e-mail: regcomments@fincen.treas.gov

Re: Comment on Anti-Money Laundering Regulations
Proposed Section 352 Investment Adviser Rule Comments

Dear Sir/Madam:

On May 5, 2003, the Financial Crimes Enforcement Network of the United States Department of Treasury ("FinCEN") published proposed rules (the "Proposed Rules") regarding the application of Section 352 of the USA PATRIOT Act to certain investment advisers. For the reasons stated below, I respectfully request that the Proposed Rules be amended to provide an exception for investment advisers whose client is a "family office" that serves as an investment vehicle for a single family or single natural person. For the reasons stated below, I also respectfully request that the Proposed Rule be revised to clarify that an adviser that is exempt from registration under a Section of 203(b) of the Investment Advisers Act of 1940 (the "Advisers Act") other than 203(b)(3) will not be subject to the Proposed Rule simply because such adviser is also entitled to rely on Section 203(b)(3) of the Advisers Act.

I understand that the formal deadline for comments was July 7, 2003. I regret that I was unable to submit this comment letter prior to that date, and respectfully request that you consider this comment letter despite the fact that it is being sent to you a few days after July 7.

I am writing on behalf of Michael Larson, who is the manager of Cascade Investment, L.L.C. ("Cascade"), of which I am the General Counsel. Cascade is the personal investment entity of William H. Gates III, the sole member of Cascade. Cascade's most recent Form 13F filed with the SEC showed assets of $2.1 billion. Mr. Larson is an employee of Mr. Gates. In connection with this employment, he serves as the manager of Cascade. Mr. Larson also manages affiliated investment vehicles of Cascade, as well as the investments of the Bill & Melinda Gates Foundation (the "Foundation").

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Under the Proposed Rules, certain investment advisers would be required to establish anti-money laundering programs. The Proposed Rules would apply to registered investment advisers with assets under management as well as unregistered investment advisers managing $30 million or more of assets if they rely on the registration exemption provided by Section 203(b)(3) of the Advisers Act.

Because Mr. Larson is an employee of Mr. Gates and the management services he provides are provided in connection with this employment, I do not believe that Mr. Larson is an investment adviser under Section 203(a)(11) of the Advisers Act. However, because it is possible that the SEC could take a contrary position, and because it is possible that Mr. Larson's status under the Advisers Act could change in the future as a result of structural changes at Cascade, it is important that we understand the possible application of the Proposed Rule to Mr. Larson if he was deemed an investment adviser under the Advisers Act.

Under the previously released proposed rules for anti-money laundering programs for unregistered investment companies (issued September 26, 2002), "family companies," as defined in Section 2(a)(51)(A)(ii) of the Investment Company Act of 1940, were excepted from the requirement to establish anti-money laundering programs. FinCEN noted that these types of companies were not likely to be used for money laundering purposes by third parties. However, the Proposed Rules do not have a similar exception for investment advisers that manage only the assets of a "family office" or single natural person. I believe the same policy considerations that warranted the "family company" exception in the unregistered investment company context apply to an investment adviser who advises a family office. Indeed, the intended benefit of providing a family company exception for unregistered investment companies is lost if the managers of such companies are themselves subject to similar requirements under the Proposed Rules because in practice most such companies are managed by advisers who could be considered investment advisers under the Investment Advisers Act.

Where an investment adviser's sole client is a "family office" there is much less risk that the investment adviser will be used as an instrument to launder money or fund terrorist activities. Under such an arrangement, an investment adviser would be familiar with the identity of the client and its beneficiaries. As noted by FinCEN in the proposed rules for unregistered investment companies, family offices are not likely to be used for money laundering purposes given their size, structure and purpose.

I would also note that imposing anti-money laundering requirements on managers of family offices will likely impose financial and administrative burdens that vastly outweigh any anti-money laundering benefits. Imposing the anti-money laundering requirements on investment advisers such as Mr. Larson or similarly situated persons would have little or no effect on preventing illegal money laundering activities. In the case of Mr. Larson in particular, application of the Proposed Rules would apparently require Mr. Larson to implement a "comprehensive anti-money laundering program" to determine whether his employer is a terrorist. I do not believe this is the intended result of the proposed regulations, and this result is easily avoided by creating an exception for advisers of family companies.

Please note that I do not believe that it is sufficient to create an exception for the managers of "family companies," as that term is defined in Section 2(a)(51)(A)(ii) of the Investment Company Act of 1940. While this approach was taken in the proposed rules for unregistered investment companies, in a comment letter I submitted to FinCEN dated November 25, 2002, I indicated that this exception would not be available to a company that is owned directly or indirectly by a single natural person. This is because Section 2(a)(51)(A)(ii) defines "family company" to include only those companies with two or

more owners. Because the policy rationale for the "family company" exception would apply to a family company with a single beneficial owner (such as Cascade), I respectfully request that any relief be extended to apply to the managers of single-owner family offices as well.

I also respectfully request that the Proposed Rule be further amended to clarify that advisers that are exempt from registration under subsections of Section of 203(b) other than 203(b)(3) are not subject to the Proposed Rule simply because they would also qualify to rely on Section 203(b)(3). For example, a director of a charitable organization who also provides investment advice to such organization would be entitled to rely on the exemption set forth in Section 203(b)(4). However, such person would also be exempt from registration under 203(b)(3) if he does not provide advice to 14 or more clients and does not hold himself out as an investment adviser or advise a registered investment company.

I do not believe the Proposed Rules were intended to require anti-money laundering compliance by an adviser who is entitled to rely on an exemption other than 203(b)(3) simply because such adviser could also rely on 203(b)(3). Indeed, the "Supplementary Information" to the Proposed Rule indicates that the Proposed Rule was intended to apply to advisers that "are relying on the registration exemption provided by Section 203(b)(3)." However, the text of the Proposed Rule does not use this language. Instead, the Proposed Rule provides that the regulations apply to any person who "is exempt from registration with the SEC pursuant to Section 203(b)(3)" who meets certain other requirements. This matter is of particular importance to Mr. Larson because he directs the investments for the Foundation.

I do not believe that the application of the Proposed Rules to persons such as Mr. Larson is consistent with the policy goals of either the Proposed Rules or the USA PATRIOT Act. For these reasons, I respectfully request that the Proposed Rules be amended to provide that investment advisers whose client is a "family office" as described in this letter be excepted from the requirement to implement an anti-money laundering program and file notice with FinCEN (provided that such adviser's other activities are not otherwise subject to the Proposed Rules as implemented). I also respectfully request that the Proposed Rules be amended to clarify that an adviser that is exempt under a subsection of Section 203(b) other than 203(b)(3) will not be subject to the Proposed Rules simply because such adviser could also rely on Section 203(b)(3).

Please call if I can answer any questions at (425) 893-6360.

Very truly yours,

Mark R. Beatty
General Counsel
Cascade Investment, L.L.C.

cc: Michael Larson
Jonathan Fisher, Esq.