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SEC Adopts Rule Defining "Family Office"

The Securities and Exchange Commission (the "SEC") recently adopted a final rule (the "Rule") defining "family offices" that are to be excluded from the definition of an investment adviser and corresponding registration requirements under the Investment Advisers Act of 1940 (the "Advisers Act"). The SEC adopted the Rule pursuant to Section 403 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").

"Family offices" are entities established by families to manage their wealth and provide other services to family members, such as tax and estate planning. Although family offices have historically been subject Advisers Act regulation, most have taken advantage of an exemption for firms that advise fewer than fifteen clients (the "Private Adviser Exemption") or have obtained exemptive orders from the SEC. The Dodd-Frank Act repeals the Private Adviser Exemption to enable SEC regulation of hedge fund and other private fund advisers. The Dodd-Frank Act, however, also includes a provision requiring the SEC to define the term "family office" so as to exempt them from Advisers Act regulation.

Under the Rule, a family office will be excluded from Advisers Act regulation if it meets the following three conditions: (1) it provides investment advice only to "family clients," (2) it is wholly owned by "family clients" and is exclusively controlled by family members and/or family entities, and (3) it does not hold itself out to the public as an investment adviser.

The family office can advise only "family clients" which include (1) "family members," which include all lineal descendents (including by adoption, current and former stepchildren, foster children, and by legal guardianship in some cases) of a common ancestor (who is no more than ten generations removed from the youngest generation of family members), and such lineal descendents' current and former spouses or spousal equivalents, (2) "key employees" of the family office or its affiliate family office, and (3) "other family clients," which generally include non-profit organizations funded exclusively by family clients, estates of family members or key employees, certain family client trusts, and any company wholly-owned by and operated for the sole benefit of family clients.

Note that the broader class of "family clients" may own the family office, but the Rule requires that control remain exclusively with the narrower class of "family members" and related entities. The Rule does not extend to family offices serving multiple families, as several commenters had urged. The Rule does incorporate a grandfathering provision that does not preclude certain family offices from meeting the exclusion solely because they provide investment advice to certain clients and provided that advice prior to January 1, 2010.

Family offices that do not meet terms of the exclusion must register with the SEC or with applicable state securities authorities by March 30, 2012 or obtain a SEC exemptive order. Family offices which have previously obtained exemptive orders from the SEC may continue to rely upon such orders.

Should you have questions regarding the Rule, please contact Scott McGinness at smcginness@millermartin.com, Lance Bridgesmith at lpbridgesmith@millermartin.com, Philip Meyer at pmeyer@millermartin.com, or any other member of [Miller &](#)

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