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An important Family Office update from the law firm of Jackson Walker.

September 13, 2011

New SEC Rule Defining Family Office Is Now in Effect

By **Pete Hyndman**

The drafters of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") included an exclusion from the definition of "investment adviser" under the Investment Advisers Act of 1940 (the "Advisers Act") for any family office, as that term is defined by the SEC. In response, the SEC adopted rule 202(a)(11)(G)-1 to define the term "family office" for the purpose of the Dodd-Frank exclusion. This rule went into effect on August 28, 2011.

Under this new rule, a family office must meet the following three requirements in order to fall within the scope of the exclusion and avoid the registration requirements of the Advisers Act:

1. Except in limited circumstances, a family office must have no clients other than "family clients," meaning (i) current and former family members (which includes any lineal descendants from a common ancestor not more than ten generations removed from the youngest generation of family members); (ii) current key employees (as well as former key employees, subject to certain restrictions); (iii) their spouses, spousal equivalents, or, under certain circumstances, former spouses; and (iv) the estates of these parties, as well as various types of trusts and charitable organizations controlled or funded solely by current or former family members or current key employees.
2. A family office must be wholly owned by family clients and exclusively controlled by one or more family members or family entities. Control exercised by a non-family member by virtue of being an officer does not count as control for the purposes of this requirement.
3. A family office cannot hold itself out to the public as an investment adviser.

Unregistered family offices that directly or indirectly provided investment advice primarily to members of a single family as of July 21, 2011, (in reliance on former §203(b)(3) of the Advisers Act) remain exempt from registration as investment advisers until March 30, 2012. This transition period gives all unregistered family offices time to evaluate whether they fit under this new exclusion and to decide whether to register under the Advisers Act if they do not fit under this exclusion. Additionally, there is an extended transition period for an entity that would qualify as a family office but for its having advised one or more charitable organizations that received funding from individuals or companies that are not family clients. Any such entity is exempt until December 31, 2013, so long as such charitable organizations do not accept additional funding from a non-family client after August 31, 2011.

If you have questions regarding the applicability of the revised rule—or about any tax, estate planning, corporate, real estate, aviation,

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JW Family Office Practice Area

JW Family Office Attorneys

Contact JW

www.jw.com

Offices

Austin
100 Congress Avenue
Suite 1100
Austin, TX 78701

Dallas
901 Main Street
Suite 6000
Dallas, TX 75202

Fort Worth
777 Main Street
Suite 2100
Fort Worth, TX 76102

Houston
1401 McKinney Street
Suite 1900
Houston, TX 77010

San Angelo
301 W. Beauregard Avenue
Suite 200
San Angelo, TX 76903

San Antonio
112 E. Pecan Street
Suite 2400
San Antonio, TX 78205

or litigation issues affecting your family office or multifamily office—please contact any one of the following attorneys in our **Family Office Practice**: **David Rex** at 214.953.5802 or **drex@jw.com**, **Brian Dethrow** at 214.953.5794 or **bdethrow@jw.com**, or **Michael Baldwin** at 512.236.2355 or **mbaldwin@jw.com**.

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901 Main Street, Suite 6000 | Dallas, Texas 75202