



FAMILY OFFICE ALERT

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SEC ADOPTS FINAL RULES FOR RIA REGISTRATION

On June 23, 2011, the Securities Exchange Commission ("SEC") promulgated Final Rule 275.202(a)(11)(G)-1 ("Final Rule") defining the term "family offices" for purposes of excluding certain family offices from the registration requirements of the Investment Advisers Act of 1940 ("Advisers Act") as amended last July by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

The Dodd-Frank Act repealed the private adviser exemption under Section 203(b)(3) of the Advisers Act which most family offices had previously relied upon to avoid registration. Family offices were hoping to rely upon a new exemption for "family offices" under the Dodd-Frank Act, but were waiting on the SEC to provide further guidance as to who would qualify as a "family office." Last year the SEC issued proposed rules that specifically excluded multi-family offices from the definition of a family office and very narrowly defined the term family office.

In response to commentary provided to the SEC, the final rules broadened the scope of who would qualify as a family office, but continued to exclude multi-family offices from the definition. Under the final rules, a single non-family investor can trigger a registration requirement under the Advisers Act. "Although the SEC has done a good job of providing clear guidance as to who qualifies as a family office, the final rules are not favorable to most family office structures," said Steven J. Thayer of Handler Thayer, LLP. Thayer further stated that "it's not uncommon to find families pooling investment funds to make joint investments with other families or individuals." Thayer stated that "many family offices will now have to look to other exemptions to avoid registration under the Advisers Act." The SEC simultaneously issued final rules for venture capital funds and certain private investment funds. "Each of these exemptions are also narrowly crafted and should not be taken for granted. A detailed analysis of each investment advisory arrangement is now required before you can make a determination of whether or not you need to be registered," Thayer said.

The Final Rule adopted by the SEC defines a family office as a company that: (a) has no clients other than family clients; (b) is wholly owned and exclusively controlled by family members or family entities; and (c) does not hold itself out to be an investment adviser. The term family client includes family members (defined as all lineal descendants, including adopted, step and foster children, of a common ancestor who may be living or deceased, and such lineal descendants' spouses or spousal equivalents; provided that the common ancestor is no more than 10 generations removed from the youngest generation), key employees and various types of non-profit organizations, trusts and companies that are funded by, created for the exclusive benefit of, or controlled by family members.

The SEC is delaying enforcement of the registration requirements in certain instances until March 30, 2012, for family offices that were previously relying on the private adviser exemption from the Advisers Act. The SEC also chose not to revoke previous no action letters that provided exemptions to certain family offices on a case-by-case basis. Any family office that would be a family office but for it having one or more non-profit organizations that have received funding from sources other than family clients may be able to rely upon the family office exemption until December 31, 2013. In certain instances, when a family office fails to qualify due to the death of a family member

or key employee, the family has up to one year to either come into compliance or face registration. The spirit of the new rules is clearly to require registration in most instances, except for the narrowly crafted exemptions.

For more information on the final rules or for a complete copy of these rules see <http://www.sec.gov/rules/final/2011/ia-3220.pdf>.

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