

## SEC Proposes New Rule For "Family Offices" Under Dodd-Frank Act

As part of its mandate under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"), the Securities and Exchange Commission (the "Commission") has proposed a new rule, Rule 202(a)(11)(G)-1 under the Investment Advisers Act of 1940, as amended (the "Advisers Act"), that would exempt those managing the financial portfolios of their "family office" from regulation under the Advisers Act.

### Background

Family offices are entities established by wealthy families to manage their money and provide tax, investment and estate planning services. At present, family offices are generally exempt from the registration and compliance requirements of the Advisers Act under the so-called "private adviser exemption" under Section 203(b) of the Advisers Act, which exempts from registration any investment adviser who, in any 12 month period, has advised fewer than 15 clients and neither holds itself out to the public as being an investment adviser nor acts as an investment adviser for a registered investment company. In addition, many family offices have operated under the directive of a long history of exemptive orders adopted by the Commission. Effective July 21, 2011, the Dodd-Frank Act will remove the private adviser exemption from the Advisers Act in an effort to increase the registration and transparency of managers of hedge funds, private equity funds and the like, which have relied heavily on the exemption. The Commission has stated its belief that family offices were never the sort of arrangement Congress designed the Advisers Act to regulate. As such, Congress included a new exclusion from the Advisers Act for "family offices" and has directed the Commission to adopt a definition of the term. The proposed rule is open for public comment until November 18, 2010.

### The Proposed Rule

Definition of "Family Office." Under the proposed rule, a "family office" is defined as a company (including the directors, partners, trustees and employees acting within the scope of their position or employment) that: (i) has no clients other than family clients, (ii) is wholly owned and controlled by family members and (iii) does not hold itself out to the public as an investment adviser. As currently drafted, the family office exemption is only available to family offices that manage the investments of a single family; multi-family offices will not be exempt under the proposed rule.

Definition of "Family Client." Under the proposed rule, a "family client" includes any (i) "family member", (ii) "key employee" (meaning an executive officer, director, trustee and the like who meets certain thresholds of financial knowledge and sophistication), (iii) charitable foundation, organization or trust funded exclusively by one or more family members, (iv) any trust or estate existing for the sole benefit of one or more family members, (v) any entity wholly owned and controlled exclusively by, and operated for the sole benefit of, one or more family members, (vi) any former family members (with respect only to investments made while such person was a family member) or (vii) any former key employee (with respect only to investments made while such person was a key employee).

Definition of "Family Member." Under the proposed rule, a "family member" includes (i) the founders of the family office, their lineal descendents (including by adoption and stepchildren) and such lineal descendents' spouses or spousal equivalents (meaning a cohabitant occupying a relationship generally equivalent to a spouse), (ii) the parents of the founders and (iii) the siblings of the founders and such siblings' spouses or spousal equivalents and their lineal descendents (including by adoption and stepchildren) and such lineal descendents' spouses or spousal equivalents.

### Grandfathering

The proposed rule contains a grandfathering provision in certain circumstances that includes in the definition of family office any person who was not registered or required to be registered under the Advisers Act on January 1, 2010 and who provides investment advice to a specified type of client; provided, that managers of family offices who qualify for exemption under the grandfathering provision will still be subject to the general anti-fraud provisions of the Advisers Act.

If you have any questions about this Client Alert, please contact the authors **Allan Grauberd** at [agrauberd@mosessinger.com](mailto:agrauberd@mosessinger.com) / 212.554.7883 or **Joshua M. O'Melia** at [jomelia@mosessinger.com](mailto:jomelia@mosessinger.com) / 212.554.7645.

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The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-1299  
Tel: 212.554.7800 Fax: 212.554.7700

2200 Fletcher Avenue  
Fort Lee, NJ 07024  
Tel: 201.363.1210 Fax: 201.363.9210  
Abraham Y. Skoff, Esq.  
Managing Attorney for New Jersey

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