California Corporate & Securities Law

SEC’s Proposed “Family Office” Rule and Rule 260.204.9

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In *The Snows of Kilimanjaro*, Ernest Hemingway wrote: “‘The very rich are different from you and me.’ And how someone had said to Julian, ‘Yes, they have more money.’” That is certainly true in the case of the families described in the Securities and Exchange Commission’s recently proposed family office rule.

According to the SEC, “family offices” are established by wealthy families to manage their riches, plan for the future and provide other services for family members. According to this article by Pamela Black, “[s]ingle-family offices generally range in size from $51 million to 2.1 billion”. Although family offices generally meet the definition of “investment adviser” under the Investment Advisers Act of 1940, many family offices have relied on the exemption in § 203(b)(3) of the Advisers Act. That section exempts advisers from registration if they have fewer than 15 clients and meet certain other requirements. The Dodd-Frank Wall Street Reform and Consumer Protection Act repeals the 15-client exemption in § 203(b)(3) effective July 21, 2011. However, Section 409 of the Dodd-Frank Act creates a new exclusion in § 202(a)(11)(G) pursuant to which family offices, as defined by the SEC, are not investment advisers subject to the Advisers Act. The SEC’s proposal rule would define “family office” for this purpose.

To the extent that family offices are exempt from registration under the Advisers Act, they are subject to registration under the Corporate Securities Law of 1968. (Advisers Act § 203A(b)(1)(A) prohibits states from requiring registration of advisers registered under the Advisers Act). However, family offices relying on the § 203(b)(3) exemption under the Advisers Act are also exempt from registration under the CSL so long as they have assets under management of at least $25 million. 10 CCR § 260.204.9. Congress’ decision to create an *exclusion* (as opposed to an exemption) means that family offices will no longer need to rely on Rule 260.204.9. The reason is that § 203A(b)(1)(B) prohibits a state from requiring registration of any person who is excepted from the definition of an investment adviser under section 202(a)(11).

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