News Bulletin

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All in the Family: Family Offices

The Dodd-Frank Act (the "Act") subjects more private fund advisers to registration. The Act removes two existing exemptions from registration under the Investment Advisers Act of 1940 that most private fund investment advisers currently rely on to avoid registration. The Act repeals in its entirety the "private adviser exemption" previously found in Section 203(b)(3) of the Advisers Act. The Act also defines the term "private fund" as an issuer that would be an investment company as defined by the Investment Company Act of 1940 but for the exemptions provided by Section 3(c)(1) or 3(c)(7) of the Investment Company Act. The Act does provide a number of exemptions for various types of investment advisers, including any "family office." Historically, there has not been a statutory or other uniform regulatory definition of a "single family office." It is generally acknowledged that many families, for estate or other tax planning purposes, or in order to gain certain efficiencies in managing their assets, organize an entity or entities for these purposes. It is also common that larger family offices may provide services to non-family member clients. In recent years, there has been a proliferation of single family offices. In fact, in the SEC's release discussed below, the SEC notes that there are estimated to be between 2,500 and 3,000 single family offices managing more than $1.2 trillion in assets.

A single family office may be organized as an asset management entity or may be organized as a "private fund." The single family office may be registered on its own as a broker-dealer (in rare cases), as a "trust" office, or as an investment adviser. The SEC had issued a number of orders that declared certain family offices not to be "investment advisers" subject to registration. These orders provided guidance concerning the types of activities that would be characteristic of a "family office" not required to be registered as an investment adviser. Generally, those orders had provided relief only to family offices that limited their advisory services to members of a single family. On October 12, 2010, the SEC published for comment a proposed definition of "family office," which would be new rule 202(a)(11)(G)-1 under the Advisers Act. The rule would provide a definition of a "family office" that would be excluded from the definition of an investment adviser and therefore not subject any family office to the provisions of the Advisers Act.

A family office would be defined by the rule as a firm that provides investment advice only to family members, charities and trusts created by family members and entities wholly owned and controlled by family members and that does not hold itself out as an investment adviser. Family clients and family members are defined relatively broadly. The proposed rule requires that the family office be wholly owned and controlled, directly or indirectly, by family members to distinguish family offices from family-run offices that provide advice to other people and operate in a more commercial manner typical of smaller investment advisers. Comments on the proposed rule are requested by November 18, 2010.

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