

Impact on Family Offices of the Dodd-Frank Investment Adviser Registration Changes

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Are you a “family office?” In general, family offices are entities established by wealthy families to manage their wealth and provide related services. Family offices have generally been exempt from the investment adviser registration requirements of the Investment Advisers Act of 1940 (the “Advisers Act”), which otherwise requires persons who act as investment advisers, as defined therein, to register with the Securities and Exchange Commission (the “SEC”) and comply with certain reporting and other requirements.

Most family offices currently rely on either the “private adviser exemption” set forth in Section 203(b)(3) of the Advisers Act, which exempts from the Advisers Act’s registration requirements an investment adviser with less than 15 clients that does not hold itself out to the public as an investment adviser, or an exemptive order from the SEC, to avoid SEC registration.

New Federal Requirements

The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), which was signed into law by President Obama on July 21, 2010, eliminates the private adviser exemption. Instead, the Dodd-Frank Act provides several exemptions, including exempting family offices, as defined by the SEC, from the definition of an investment adviser under the Advisers Act. As a result, family offices that meet the SEC’s definition will continue to be exempt from SEC registration. **However, as further discussed below, even if you are exempt from SEC registration, you may be subject to state registration as an investment adviser.**

The SEC has proposed to define a “family office” as a company that:

- provides investment advice only to family members (as defined in the rule), certain key employees, charities and trusts established by family members and entities wholly owned and controlled by family members;
- is wholly owned and controlled by family members; and
- does not hold itself out to the public as an investment adviser.

The proposed definition is generally consistent with existing SEC exemptive orders in this regard.

You must comply with every aspect of the family office definition in order to be exempt from the definition of an investment adviser and thus from SEC registration. **If your family office has clients that are outside of the family, unless a key employee or permitted entity as noted above, you will not be eligible for the exemption. However, such entities may still apply for an SEC exemptive order to avoid SEC registration if they have \$100 million or more in assets under management** (pursuant to the Dodd-Frank Act, oversight of investment advisers with less than \$100 million in assets under management shifts to the states).

State Law Requirements

An entity that meets the SEC's definition of family office and is therefore exempt from SEC registration must still register as an investment adviser in any state in which it maintains an office or has more than five clients if required to do so under the applicable law of such state, unless an exemption is available. The same rule applies to an entity that does not meet the SEC's definition of family office but has less than \$100 million in assets under management. **Maryland does not have an exemption from investment adviser registration for family offices.**

Therefore, absent relief from the Maryland Securities Division, if you are entity with its principal office in Maryland: (a) that meets the SEC's definition of family office or (b) that does not meet the SEC's definition and has less than \$100 million in assets under management, you must register as a Maryland investment adviser.

Next Steps

The investment adviser provisions of the Dodd-Frank Act become effective on July 21, 2011, which is one year after the date the Dodd-Frank Act was enacted. If you believe you will be required to register, we advise you to take steps now so as to allow time for your registration to become effective prior to July 21, 2011.

We advise a number of SEC and Maryland registered investment advisers and stand ready to assist you in complying with any registration and compliance changes you may have to address as a result of the Dodd-Frank Act's investment adviser registration provisions.

The proposing releases for the SEC's proposed rules discussed in this memorandum are available at www.sec.gov/rules/proposed/2010/ia-3098.pdf and www.sec.gov/rules/proposed/2010/ia-3110.pdf.

This memorandum contains only a general summary of the Dodd-Frank Act's impact on investment adviser registration with respect to family offices and should not be construed as providing legal advice. If you have any questions about the information in this Memorandum, please contact [Kenneth B. Abel](#) at 410.347.7394 or [Penny Somer-Greif](#) at 410.347.7341.

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