

LEGAL UPDATES

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## SEC Proposes New Family Office Definition under Dodd-Frank

On October 12, 2010, the Securities and Exchange Commission (SEC) proposed a new rule that would exempt “family offices” from the definition of investment adviser under the Investment Advisers Act of 1940. Family offices are generally established by wealthy families to manage their money and provide tax and estate planning and similar services. Historically, they were not required to register with the SEC under the Advisers Act because of an exemption for investment advisers with fewer than 15 clients.

The Dodd-Frank Act removed the registration exemption to enable the SEC to regulate hedge fund and other private fund advisers. However, recognizing that without the exemption, traditional family offices would be exposed to registration requirements, Congress created a new exclusion for family offices and directed the SEC to define the category consistent with previous exemptive policy, accounting for the types of structures used by family offices.

The SEC proposal defines a family office as any firm that:

Provides investment advice only to family members, 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

Does not hold itself out to the public as an investment adviser

Under the proposed rule, family members include the founders and their lineal descendants (including adopted and step-children), parents and siblings, as well as the lineal descendants of their siblings and any spouse or spouse equivalent of any family member. The proposal contains a limited grandfathering provision for certain types of offices that were not required to

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register under the Advisers Act on January 1, 2010. In addition, entities that qualify for exemption under the proposed rule will not be subject to registration as investment advisers under state securities laws.

Public comments on the proposed rule must be received by the SEC by November 18, 2010.

## **What This Means to You**

Family offices that relied upon the previous registration exemption should review the proposed rules and assess the impact, if any, upon their organization's registration requirements.

## **Contact Info**

For additional information about the rule or any other investment adviser issues, please contact your Husch Blackwell attorney.

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