

As we have discussed in a prior Family Office Insight,¹ the so-called "Family Office Rule" under the Investment Advisers Act of 1940 (Advisers Act) provides an exemption from registration under the Advisers Act for family offices that (1) provide investment advice only to "family clients"; (2) are wholly owned by family clients and exclusively controlled by family members/family entities; and (3) do not hold themselves out to the public as investment advisers.²

Since the release of the Family Office Rule, the Securities and Exchange Commission (SEC) has provided some further guidance on the scope of the complex "family client" definition.³ Under the definition, "family clients" can only consist of the lineal descendants of an individual ancestor and their spouses or spousal equivalents. However, the relatives of those spouses are excluded from this definition.

Since the enactment of the Family Office Rule, the SEC has granted a limited number of exceptions to the Family Office Rule to allow for a spouse's relatives or other closely related family members ("additional family clients") to be included in the definition of "family client."⁴ The applicants for the exemptions have been investment managers who are exempt from registration under the Advisers Act because they meet the requirements of the "Family Office" definition, but who would no longer qualify for the exemption if investment services were provided to the proposed additional family client.

Each exception has been granted upon the particular facts in the request for exemptive relief, but the SEC has granted such exceptions to those in substantially similar circumstances to the applicants who came before.

When determining whether to grant the exemption requests, the SEC has looked at whether:

- The addition of the additional family client would change the nature of the office into a commercial advisory firm
- The additional family clients are few in number
- The additional family clients would represent a small percentage of the total assets under management
- The inclusion of the additional family clients as "family clients" simply formalizes and memorializes the familial ties and intrafamilial relationships that already exist and have existed for a number of years⁵
- There is no public interest that would require the family office to register as an investment adviser

Just as if they had been included in the original definition of "family client," the additional family clients may include their spouses, estates, and trusts or funds.

Although the additional family clients may receive investment management services from the family office, they may not control or participate in the management of the office. The office must remain, and must be at all times wholly owned by family clients meeting the statutory definition and exclusively controlled by "family members" or "family entities" as defined in the rule. Furthermore, the assets beneficially owned by "family members" and/or "family entities" must account for a large majority⁶ of the family office's assets under management.

While this exception is limited, it may provide important relief for family offices seeking to include an important in-law or similar family member, and shows a willingness on the part of the SEC to apply a measure of flexibility to the application of the Family Office Rule. Family offices may want to consider whether there are potential "additional family members" for whom they may wish to obtain this exemptive relief.

Please contact your principal lawyer at the firm or any of the lawyers listed in this publication for additional information or for help on these matters.

Daniel Berick

Partner, Cleveland
T +1 216 479 8374
E daniel.berick@squirepb.com

Zachary Hofstetter

Associate, Cleveland
T +1 216 479 8517
E zachary.hofstetter@squirepb.com

1 [26895-2017-june-family-office-insight-family-office-exemption.pdf \(squirepattonboggs.com\)](https://www.squirepattonboggs.com/insights/26895-2017-june-family-office-insight-family-office-exemption.pdf).

2 Investment Advisers Act Rule 202(a)(11)(G)-1.

3 Investment Advisers Act Rule 202(a)(11)(G)-1(d)(4).

4 See Investment Advisers Act Release No. IA-5624.

5 "Nine years" was cited in one application, which the SEC approved. See Investment Advisers Act Release No. IA-4066.

6 The SEC approved an exemption where this figure was 75%. See Investment Advisers Act Release No. IA-3867.