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Proposed SEC Rule Would Provide Family Offices Advisers Act Exemption in Aftermath of Dodd-Frank Act

The term "family office" is used to describe entities established by wealthy individuals to manage their wealth and provide financial and other services to themselves and their families. According to an industry publication from the spring of 2010, there are approximately 2,500 to 3,000 single-family offices in the United States, managing more than US$1.2 trillion in assets.

In the past, many family offices have avoided the requirement to register as investment advisers under the Investment Advisers Act of 1940 (the Advisers Act) by relying on Section 203(b)(3) of the Advisers Act. This section provides an exemption for advisers that have no more than 15 clients and do not hold themselves out to the general public as an investment adviser. Since the 1940s, the Securities and Exchange Commission (the SEC) has issued 13 orders specifically exempting family offices from the definition of investment adviser under the Advisers Act.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) was signed into law. Dodd-Frank, among other things, repealed Section 203(b)(3) of the Advisers Act, which eliminated the Advisers Act registration exemption that family offices had relied upon.

Congress, despite repealing Section 203(b)(3), did not

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Contacts:

Daniel G. Berick
+1.216.479.8374

Gregory K. Gale
+1.216.479.8098

Jonathon Whittlesey
+1.216.479.8434

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intend to require family offices to register under the Advisers Act. To reflect that intent, Congress authorized the SEC to propose a new rule that would provide an Advisers Act exemption for family offices. Under this proposed rule (Rule 202(a)(11)(G)-1), a family office would be defined as "a company (including its directors, partners, trustees, and employees acting with the scope of their position or employment)" that: (i) has no clients other than family clients; (ii) is wholly owned or controlled by family members; and (iii) does not hold itself out as an investment adviser. The terms "family clients" and "family member" are both broadly defined under the proposed rule to include a wide range of individuals and entities. The proposed rule would also provide an exemption for certain family offices that meet certain conditions and were not registered or required to be registered on January 1, 2010.

The proposed rule would allow family offices to continue to provide their services in accordance with their historical practice, without being required to undergo the burdensome process of Advisers Act registration. The SEC has requested comments on the proposed rule on or before November 18, 2010.

For additional information on the topics raised in this Alert, please contact your principal Squire Sanders lawyer or any of the lawyers listed in this Alert.

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