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SEC Adopts Rule Defining "Family Office" Exclusion Under the Investment Advisers Act

On June 22, 2011, the Securities and Exchange Commission (the "SEC") adopted rule 202(a)(11)(G)-1 (the "Final Rule"),[1] defining family office and related terms for purposes of the exclusion of family offices from the definition of investment adviser under the Investment Advisers Act of 1940 (as amended, the "Advisers Act"),[2] as amended by the Private Fund Investment Advisers Registration Act of 2010 (the "Registration Act").[3] The exemptions under the Final Rule are generally broader than the exemptions that the SEC initially proposed on October 12, 2010 (the "Proposed Rule").[4] The Final Rule expands the class of individuals and entities included in the definition of family clients and allows for the ownership of the family office by family clients, instead of the more limited class of family members. The Final Rule became effective on August 29, 2011.[5]

I. Registration Act and Family Offices

Historically, many family offices avoided registering with the SEC by relying upon the "private adviser exemption" under the Advisers Act,[6] which provided that an investment adviser[7] was exempt from registration if it had fewer than 15 clients during the course of the preceding 12 months and neither held itself out generally to the public as an investment adviser nor acted as an investment adviser to any registered investment company.

The Registration Act eliminated the private adviser exemption in its entirety and, in its place, introduced several new exemptions from registration, including an exclusion for certain family offices. The Registration Act directed the SEC to provide a definition of family offices that (a) is consistent with the SEC's previous exemptive policy in this area, (b) recognizes the range of organizational, management and employment structures and arrangements employed by these advisers and (c) grandfathers certain family offices.[8]

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1 *See* Family Offices, Investment Advisers Act Release No. IA-3220 (June 22, 2011) (the "Final Release"), *available at* http://sec.gov/rules/final/2011/ia-3220.pdf. The Final Release set forth Rule 202(a)(11)(G)-1 (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1) (the "Final Rule").

2 15 U.S.C. §§ 80b-1 to -21.

3 The Registration Act comprises Title IV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was signed into law by President Barack H. Obama on July 21, 2010. Pub. L. No. 111-203, 124 Stat. 1376 (2010).

4 *See* Family Offices, Investment Advisers Act Release No. IA-3098 (Oct. 12, 2010) (the "Proposing Release"), *available at* http://sec.gov/rules/proposed/2010/ia-3098.pdf.

5 Family Offices, 76 Fed. Reg. 37,983, 37,983 (June 29, 2011).

6 15 U.S.C. § 80b-3(b)(3).

7 Section 202(a)(11) of the Advisers Act defines "investment adviser" as any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. 15 U.S.C. § 80b-2(a)(11). Most family offices render their services for compensation and, as a result, are included within the definition of investment adviser.

8 Section 409 of the Registration Act.

The Final Rule defines "family office" as a company[9] (including its directors, partners, members, managers, trustees and employees acting within the scope of their position or employment) that: (a) has no clients other than family clients, (b) is wholly owned by family clients and exclusively controlled (directly or indirectly) by one or more family members and/or family entities and (c) does not hold itself out to the public as an investment adviser.[10]

II. Family Clients

Family clients include: (a) family members and former family members, (b) key employees of the family office (and under certain circumstances, former key employees), (c) certain trusts and estates of family clients, (d) charitable entities funded by family clients and (e) certain entities owned by family clients.[11]

A. Family Members and Former Family Members

Family Members

Family members include all lineal descendants of a common ancestor (the common ancestor may be deceased), as well as spouses or spousal equivalents[12] of such descendants, who are no more than ten generations removed from the common ancestor.[13] Adopted children, stepchildren, foster children and individuals who were minors when a family member became their legal guardian also are considered to be family members.[14]

The Proposed Rule defined a family member by reference to the founders of the family office.[15] The Proposed Rule assumed that the founder of a family office was the initial generator of a family's wealth and that the founder was an individual or couple.[16] The Proposed Rule also treated family members differently depending on when the family office was established.[17] The Final Rule avoids any assumptions regarding the source of family wealth and avoids the inconsistent treatment of family members in the Proposed Rule.[18] The SEC's articulated purpose of the ten generation limit is to

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9 The term "company" has the same meaning as in section 202(a)(5) of the Advisers Act, which defines the term as: a corporation; a partnership; an association; a joint-stock company; a trust; any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under title 11, or similar official, or any liquidating agent for any of the foregoing, in his capacity as such. Final Release, *supra* note 1, at 6 n.15. *See also* 15 U.S.C. § 80b-2(a)(5).

10 Rule 202(a)(11)(G)-1(b) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(b)). A family office that currently is registered as an investment adviser will not be prohibited from de-registering in reliance on Rule 202(a)(11)(G)-1 solely because the family office has held itself out to the public as an investment adviser while registered under the Advisers Act. Final Release, *supra* note 1, at 33 n.112. The terms "family client," "family member," and "family entity" are discussed below in Part II.

11 Rule 202(a)(11)(G)-1(d)(4) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)).

12 "Spousal equivalent" means a cohabitant occupying a relationship generally equivalent to that of a spouse. Rule 202(a)(11)(G)-1(d)(9) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(9)).

13 Rule 202(a)(11)(G)-1(d)(6) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(6)).

14 *Id.* The Final Rule includes foster children and individuals who were minors when a family member became their legal guardian in response to comments that they often have familial ties that are indistinguishable from those of biological children and stepchildren, and that including them would not violate the policies of the Advisers Act. Final Release, *supra* note 1, at 11-12.

15 Proposing Release, *supra* note 4, at 39.

16 Final Release, *supra* note 1, at 7.

17 *Id.* at 7-8. Under the Proposed Rule, a family office that was formed generations ago would have been permitted to provide investment advice to persons that are currently third or fourth cousins to each other, but a family office established today would have needed to wait decades before being able to provide investment advice to family members of equivalent relation. *Id.*

18 *Id.* at 9.

prevent a family office from choosing an extremely remote ancestor, which the SEC believes could allow a commercial advisory business to rely on the rule.[19] The Final Rule also provides family offices additional flexibility by allowing them to change the designated common ancestor over time.[20]

Former Family Members

The Proposed Rule would have permitted former family members[21] to retain investments held through the family office at such time he or she became a former family member but would generally not have allowed them to make new investments.[22] However, the SEC agreed with comments that former spouses often support children who remain family members and that stepchildren of a divorced spouse often remain close to the family after a divorce.[23] Consequently, under the Final Rule, former family members may retain their investments with the family office and make new investments with the family office.[24]

Limitations

Although the "family member" definition in the Final Rule is generally broader than that in the Proposed Rule, there are some limitations in the Final Rule. The Proposed Rule included in-laws by including the founders' parents, the founders' siblings and such siblings' spouses. The Final Rule defines family members by reference to a single common ancestor rather than to founders and does not include the common ancestor himself, his spouse, his parents or siblings, his spouse's parents or siblings, or parents or siblings (or their spouses) of any spouse of a lineal descendant. In other words, a family office may provide advice to parents and siblings of a lineal descendant but may not provide advice to his spouse's parents or siblings or their spouses. In this respect, the Final Rule is narrower than the Proposed Rule and seems to provide an arbitrarily inconsistent result. Furthermore, certain family offices may have to split up in order to comply with the ten generation limit.

B. Key Employees and Former Key Employees

Key Employees

A family office may provide investment advice to key employees of the family office.[25] Key employees include: (a) any natural person (including any key employee's spouse or spousal equivalent who holds a joint, community property, or other similar shared ownership interest with such key employee) who is an executive officer,[26] director, trustee, general partner or person serving in a similar capacity of the family office or its affiliated family office;[27] or (b) any employee of the family

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19 *Id.*

20 *Id.* at 10. No formal documentation or procedure is required for designating or redesignating a common ancestor. *Id.* at 10 n.27.

21 The term "former family members" means former spouses, spousal equivalents and stepchildren. *Id.* at 12.

22 Proposing Release, *supra* note 4, at 38-39.

23 Final Release, *supra* note 1, at 12.

24 Rule 202(a)(11)(G)-1(d)(4)(ii) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(ii)).

25 Rule 202(a)(11)(G)-1(d)(4)(iii) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(iii)).

26 "Executive officer" means the president, any vice president in charge of a principal business unit, division or function (such as administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the family office. Rule 202(a)(11)(G)-1(d)(3) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(3)). The Proposing Release did not provide a definition of "executive officer." The definition in the Final Rule is based on the "executive officer" definition in Rule 3c-5 of the Investment Company Act of 1940 (the "Investment Company Act") (15 U.S.C. §§ 80a-1 to -64), except that it does not include executives in charge of sales because such a function is not applicable to a family office. Final Release, *supra* note 1, at 26 n.92.

27 "Affiliated family office" means a family office wholly owned by family clients of another family office that is (a) controlled

office or its affiliated family office (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the family office) who, in connection with his or her regular functions or duties, participates in the investment activities of the family office or affiliated family office, provided that such employee has been performing such functions and duties for or on behalf of the family office or its affiliated family office, or substantially similar functions or duties for or on behalf of another company, for at least 12 months.[28] The key employee definition is based on the knowledgeable employee standard used in Rule 3c-5 of the Investment Company Act.[29]

Several commenters requested that the SEC permit a family office to provide investment advice to key employees of family entities that are not affiliated family offices.[30] The Final Rule does not permit this, because the SEC found that many family entities are not involved in the provision of investment advisory services, and consequently, there is no reason to expect that key employees of such family entities have sufficient knowledge and experience in financial matters.[31] The Final Rule also does not permit a family office to provide investment advice to long-term employees or business associates of the family.[32] However, the Final Rule does permit a family office to provide investment advice to key employees of an affiliated family office.[33]

Former Key Employees

Consistent with the Proposed Rule, under the Final Rule a former key employee may continue to receive investment advice from the family office with respect to assets advised by the family office immediately prior to the end of such person's employment and with respect to additional investments that the former key employee was contractually obligated to make (if such obligation arose prior to the end of such person's employment), but may not make new investments with the family office.[34]

C. Trusts and Estates

Irrevocable Trusts

The Final Rule includes within the term family client any irrevocable trust of which family clients are the only *current* beneficiaries.[35] The Final Rule also permits family offices to offer investment advice to other types of irrevocable trusts that are funded solely by family clients and in which the only current beneficiaries, in addition to family clients, are non-profit organizations, charitable foundations, charitable trusts or other charitable organizations.[36] The Proposed Rule only included trusts for the *sole* benefit of one or more family clients.[37] The Final Rule disregards contingent beneficiaries, which are typically named to prevent assets from being distributed to distant relatives or escheating

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(directly or indirectly) by one or more family members of such other family office and/or family entities affiliated with such other family office and (b) has no clients other than family clients of such other family office. Rule 202(a)(11)(G)-1(d)(1) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(1)).

28 Rule 202(a)(11)(G)-1(d)(8) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(8)).

29 Final Release, *supra* note 1, at 24.

30 *Id.* at 24.

31 *Id.* at 25.

32 *Id.* at 26.

33 Rule 202(a)(11)(G)-1(d)(8) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(8)).

34 Rule 202(a)(11)(G)-1(d)(4)(iv) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(iv)). *See also* Proposing Release, *supra* note 4, at 39.

35 Rule 202(a)(11)(G)-1(d)(4)(vii) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(vii)).

36 Rule 202(a)(11)(G)-1(d)(4)(viii) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(viii)).

37 Proposing Release, *supra* note 4, at 38.

to the state in the event all primary beneficiaries are deceased.[38] If, however, a contingent trust beneficiary who is not a family client becomes an actual (current) trust beneficiary, provisions relating to involuntary transfers described below would apply to allow a transition from the family office.[39] The identity of the trustee is not relevant for purposes of these irrevocable trust definitions.

Revocable Trusts

Family offices also may provide investment advice to revocable trusts of which one or more family clients are the sole grantors, regardless of whether the beneficiaries of the trust are family clients.[40] The SEC expanded the definition of family client to include such trusts because the grantor of a revocable trust effectively controls the trust and its beneficiaries have no reasonable expectation of obtaining any benefit from the trust until the trust becomes irrevocable.[41] Again, the identity of the trustee is not relevant.

Key Employee Trusts

The Final Rule also includes within the definition of family client any trust of which: (a) each trustee or other person authorized to make decisions with respect to the trust is a key employee; and (b) each settlor or other person who has contributed assets to the trust is a key employee or the key employee's current and/or former spouse or spousal equivalent who, at the time of contribution, holds a joint, community property, or other similar shared ownership interest with the key employee.[42] This was not included in the Proposed Rule. The SEC did not include other family members of key employees because it believes there is no reason to think a key employee's family members have the financial sophistication and experience to protect themselves when receiving investment advice, unless a joint property interest with a key employee is involved.[43]

Although the Final Release refers to the importance of a key employee having authority over investment decisions,[44] the Final Rule may require all trustees to be key employees. If a key employee retains certain powers over the trust, the assets in the trust will be includable in his estate for estate tax purposes, which would defeat any estate tax planning by the key employee.

Estates of Current and Former Family Members and Key Employees

The Final Rule also includes in the definition of family client the estate of a family member, former family member, key employee or former key employee (subject to the restriction on new investments by former employees).[45] This allows a family office to advise the executor of such an estate even if the estate will be distributed to non-family clients.[46] Because the executor of an estate acts on behalf of the deceased, the SEC considers advice to the executor of a family client's estate to be equivalent to advice to a family client.[47] The Proposed Rule only exempted an estate that exclusively benefited one or more family clients.[48]

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38 Final Release, *supra* note 1, at 15.

39 *Id.* The Final Rule's provision for such involuntary transfers is discussed below in Part IV.

40 Rule 202(a)(11)(G)-1(d)(4)(ix) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(ix)).

41 Final Release, *supra* note 1, at 16-17.

42 Rule 202(a)(11)(G)-1(d)(4)(x) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(x)).

43 Final Release, *supra* note 1, at 28.

44 *Id.* at 27.

45 Rule 202(a)(11)(G)-1(d)(4)(vi) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(vi)).

46 Final Release, *supra* note 1, at 17.

47 *Id.*

48 Proposing Release, *supra* note 4, at 38.

D. Charitable Organizations

Non-profit organizations, charitable foundations, charitable trusts (including charitable lead trusts and charitable remainder trusts whose only current beneficiaries are other family clients and charitable or non-profit organizations), and other charitable organizations qualify as family clients under the Final Rule if they are funded exclusively by one or more family clients.[49] This represents a significant expansion of the charitable organization provision that was provided under the Proposed Rule.

In addition, the SEC has provided a transition provision for charitable organizations that have accepted non-family funding that will permit family offices to continue to advise such charitable organizations until December 31, 2013, by which time these organizations will need to have spent their non-family funding to qualify under the Final Rule.[50] However, such charitable or non-profit organizations may not accept additional funding from non-family clients after August 31, 2011, other than funding received prior to December 31, 2013 that is provided in fulfillment of a pledge made prior to August 31, 2011.[51] The Proposed Rule did not contain such a transition provision.

E. Wholly Owned Companies

The Final Rule includes in the definition of family client any company wholly owned (directly or indirectly) exclusively by, and operated for the sole benefit of, one or more other family clients, provided that if any such entity is a pooled investment vehicle, it is excepted from the definition of an investment company under the Investment Company Act.[52] The Proposed Rule would have required that any such company also be controlled solely by family clients.[53] The SEC removed this requirement, agreeing with commenters that control by non-family clients is irrelevant so long as family clients are the only owners and the sole beneficiaries of the investment advice.[54]

III. Ownership and Control

The Final Rule expanded permitted owners to include family clients rather than the narrower category of family members as in the Proposed Rule.[55] The SEC made this change to allow families to structure their ownership of family offices for tax or other reasons and to allow family offices to provide incentive compensation to key employees.[56]

The Final Rule explicitly states that family entities may control family offices, which was only implied in the Proposed Rule.[57] However, the SEC declined to permit persons that are not family members or family entities to control a family office, stating that the core policy rationale of the exemption

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49 Rule 202(a)(11)(G)-1(d)(4)(v) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(v)).

50 Rule 202(a)(11)(G)-1(e)(1) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(e)(1)). *See also* Final Release, *supra* note 1, at 18. For purposes of determining whether funding provided by a non-family client is currently held by a charitable organization, an organization may treat non-family client contributions as the first amounts spent. Further, only contributions to the charitable organization need to be examined for this purpose, and not any income, gains or losses relating to those contributions. Final Release, *supra* note 1, at 19 n.66.

51 Rule 202(a)(11)(G)-1(e)(1) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(e)(1)).

52 Rule 202(a)(11)(G)-1(d)(4)(xi) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(4)(xi)).

53 Proposing Release, *supra* note 4, at 38.

54 Final Release, *supra* note 1, at 22-23.

55 Rule 202(a)(11)(G)-1(b)(2) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(b)(2)). *See also* Proposing Release, *supra* note 4, at 37.

56 Final Release, *supra* note 1, at 31-32.

57 Rule 202(a)(11)(G)-1(b)(2) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(b)(2)). The Proposed Rule allowed family members to control a family office directly or indirectly. Proposing Release, *supra* note 4, at 37.

is to allow families to manage and control their wealth.[58] According to the SEC, it added the word "exclusively" to clarify that "control" cannot be shared with individuals or companies that are not family members or family entities.[59] As proposed, the Final Rule permits family offices to be operated for the purpose of generating a profit.[60]

IV. Involuntary Transferees[61]

Under the Final Rule, an involuntary transfer of assets to a person who is not a family client as a result of a death or other involuntary transfer will not immediately cause a family office to lose its exemption from registration. In order to allow a family office to transition a transferee's interest to another investment adviser or to restructure its activities in order to comply with the Advisers Act, a family office may continue to provide investment advice to an involuntary transferee for up to one year following completion of the transfer of legal title to the assets resulting from the involuntary event.[62] The SEC had originally proposed a four month transition period, but it extended the period to allow for a more orderly transition of illiquid assets, such as investments in private funds.[63] The SEC suggests that a family office may continue to offer investment advice to an involuntary transferee beyond the one year transition period as long as the family office does not receive compensation after the transition period ends.[64]

V. Multifamily Offices

The Final Rule does not exempt family offices that advise multiple families in part because of the SEC's concern about the inability to distinguish between multiple family offices and family-owned commercial advisory firms.[65] In addition, the SEC believes that if it were to include multifamily offices within the exemption, clients of these offices would be without the protections of the Advisers Act for preventing or handling any discriminatory or fraudulent treatment of different families.[66] If several families that are unrelated through a common ancestor within ten generations have established a separate family office for each of the families, but have staffed these family offices with the same or substantially the same employees, the SEC stated such employees are managing a de facto multifamily office. As a result, these family offices may not claim the family office exclusion.[67]

VI. Grandfathering Provision

The Final Rule contains the same grandfathering provision as the Proposed Rule. A family office that was not registered or required to be registered under the Advisers Act prior to January 1, 2010 is

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58 Final Release, *supra* note 1, at 32. Note that a family entity that controls the family office may be controlled by non-family clients.

59 *Id.* at 30 n.104. A "family entity" is defined as any of the trusts, estates, companies or other entities set forth in paragraphs (v), (vi), (vii), (viii), (ix), or (xi) of subsection (d)(4) of the Final Rule, but excluding key employees and their trusts from the definition of family client solely for purposes of this definition. Rule 202(a)(11)(G)-1(d)(5) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(d)(5)).

60 Final Release, *supra* note 1, at 32 n.109.

61 Note the term "involuntary transferee" is not defined.

62 Rule 202(a)(11)(G)-1(b)(1) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(b)(1)). *See also* Final Release, *supra* note 1, at 13.

63 Final Release, *supra* note 1, at 13-14. *See also* Proposing Release, *supra* note 4, at 36.

64 Final Release, *supra* note 1, at 14 n.47.

65 *Id.* at 33.

66 *Id.* at 33-34.

67 *Id.* at 33 n.114.

not precluded from relying on the exemption solely because such family office provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to: (a) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who have invested with the family office before January 1, 2010 and are accredited investors; (b) any company owned exclusively and controlled by one or more family members; or (c) any investment adviser registered under the Advisers Act that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than five percent of the value of the total assets as to which the family office provides investment advice.[68]

VII. Transition Provision

In addition to the transition provision for charitable or non-profit organizations that have not been exclusively funded by family clients,[69] the Final Rule contains a transition provision that exempts from registration until March 30, 2012 any company engaged in the business of providing investment advice, directly or indirectly, primarily to members of a single family on July 21, 2011, and that is not registered under the Advisers Act in reliance on Section 203(b)(3) of the Advisers Act as of July 20, 2011, provided that such company: (a) during the course of the preceding twelve months had fewer than fifteen clients; and (b) neither holds itself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under the Investment Company Act, or a company which has elected to be a business development company pursuant to Section 54 of the Investment Company Act and which has not withdrawn its election.[70]

The SEC has stated that because initial applications for registration can take up to 45 days to be approved, family offices that determine they will need to register should file a complete application by February 14, 2012.[71]

In addition to relying on the private adviser exemption, a number of family offices have in the past been granted exemptive orders by the SEC excluding them from the investment adviser definition and, therefore, excusing them from registration. The Final Rule does not rescind these previously issued exemptive orders.[72] Consequently, family offices currently operating under these orders may continue to rely upon these exemptive orders even if they do not satisfy the definition of family office set forth in the Final Rule.

Family offices that will not qualify under the Final Rule and do not have an exemptive order will need to restructure, register or apply for exemptive relief.

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68 Rule 202(a)(11)(G)-1(c) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(c)). *See also* Proposing Release, *supra* note 4, at 37. A family office that would not be a family office but for this grandfathering provision will be considered an investment adviser for purposes of Sections 206(1), (2) and (4) of the Advisers Act. These sections prohibit fraudulent conduct by investment advisers. Rule 202(a)(11)(G)-1(c) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(c)).

69 *See supra* note 50.

70 Rule 202(a)(11)(G)-1(e)(2) (to be codified at 17 C.F.R. § 275.202(a)(11)(G)-1(e)(2)). The SEC provided a similar transition provision for any investment adviser who currently relies on the Section 203(b)(3) exemption, which is not exclusively for family offices but would apply to family offices relying on Section 203(b)(3) and is broader than the transition provision provided specifically for family offices. Rule 203-1(e) (to be codified at 17 C.F.R. § 275.203-1(e)). *See* Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. IA-3221, at 94-95 (June 22, 2011), *available at* http://sec.gov/rules/final/2011/ia-3221.pdf. It is basically the same as the transition rule for family offices except that there is no requirement about providing advice primarily to members of a single family.

71 Final Release, *supra* note 1, at 35 n.120.

72 *Id.* at 36.