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SECURITIES INDUSTRY PRACTICE

ALERT

SEC Adopts New Rule Defining "Family Offices"

By Kimberly P. Stein

On June 22, 2011, the Securities and Exchange Commission (SEC) adopted final rules and amendments to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act. As part of the final rules, the SEC approved a new rule to define "family offices." Such family offices are to be excluded from registration with the SEC under the Investment Advisers Act of 1940. As a result, the SEC has significantly expanded the definition of "family client" entities that can receive investment advice without violating the definition of a family office.

However, while not required to register, there are new reporting requirements for family offices to file and periodically update reports with the SEC. These reports will consist of a limited number of items on Form ADV.

Family offices that do not meet the new definition must register with the SEC by March 30, 2012. However, a later compliance date of December 31, 2013, was granted for family offices that currently manage assets for nonprofit organizations or charitable entities funded in part by nonfamily client assets and provided that advice prior to January 1, 2010, in order to allow them to orderly transition out of such services. The SEC's adopted rule incorporates a grandfathering provision that prohibits preclusion of certain family offices from meeting the new exclusion solely because they provide investment advice to certain clients.

Definition

Pursuant to the final rule, a family office is a company that:

- Has no clients other than family clients
- Is wholly owned by family clients and exclusively controlled by family members and/or family entities; and
- Does not hold itself out to the public as an investment adviser.

Under the new rule, family members and family clients are defined as follows:

- Family members include all lineal descendants (including by adoption, stepchildren, foster children and, in some cases, by legal guardianship), and such lineal descendants' spouses and spousal equivalents, of a common ancestor (living or deceased) who is no more than 10 generations removed from the youngest generation of family members.
- Family clients include family members and all of the following individuals and entities:

    –Key employees, including executive officers, directors, trustees and general partners for the family office or its affiliated family office, and any other employee of the family office or its affiliated family office (other than a clerical or secretarial employee) who has participated in the investment activities of the family office or its affiliated family office for at least 12 months;

–Any nonprofit or charitable organization funded exclusively by family clients;

–Any estate of a family member, former family member, key employee, or subject to certain conditions, a former key employee;

–Certain family client trusts; or

–Any company wholly owned by and operated for the sole benefit of family clients.

At Fox Rothschild, we remain ready to assist you in assessing the impact of the SEC's new rules on your business.
If you have any questions regarding the information in this alert, please contact:

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