

Investment Adviser Regulation Under Dodd-Frank: SEC Proposes Definition of “Family Office”

October 19, 2010. The SEC has started rulemaking to implement one of the core investment adviser regulatory changes introduced by the so-called Dodd-Frank Act. Last week, the SEC proposed a definition of “family office” – a type of adviser that will continue to be exempt from the broader adviser registration requirements that the Dodd-Frank Act will impose on most investment advisers by July 2011.

Under proposed Rule 202(a)(11)(G)-1, an adviser would qualify as a “family office” if it:

- (1) Has no clients other than “family clients” (defined generally to include family members and key employees who participate in the investment activities of the family office, as well as trusts, estates, limited liability companies, corporations, partnerships and other entities existing for the benefit of family clients), with a narrow exception related to certain involuntary transfers to non-family clients;
- (2) Is wholly owned and controlled (directly or indirectly) by family members; and
- (3) Does not hold itself out to the public as an investment adviser.

Additionally, the proposed rule would grandfather in certain other, similar, advisers who were providing investment advice to specified types of persons prior to January 1, 2010.

While drawn fairly narrowly, the proposed rule is consistent with interpretive guidance the SEC had given in the past on the application of the Advisers Act to family offices. The proposed rule suggests that when the SEC turns to the task of promulgating the substantial number of additional regulations that will be required under Dodd-Frank, the SEC will similarly follow existing interpretations where applicable. Little guidance, however, currently exists on how the SEC will apply the Advisers Act to private equity funds, a class of advisers never before subject to adviser regulation. The SEC, in fact, specifically excluded private equity funds when it last addressed a broadening of investment adviser registration requirements in 2004. They are, however, now covered under the Dodd-Frank Act.

Morrison Cohen will be closely following regulatory developments, particularly as they impact investment funds and their general partners and management companies and the July 2011 registration deadline and will periodically update its clients on these developments. An analysis of some of the provisions of Dodd-Frank most pertinent to our clients can be found at <http://morrisoncohen.com/downloads/Dodd-Frank%20Wall%20Street%20Reform%20Summaries.pdf>.

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