

PUBLICATION

SEC Interprets Family Office Exemptions for Funds and Advisors

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Two recent releases by the United States Securities and Exchange Commission (SEC) offer guidance in the use of so-called "Family Office" exemptions available to funds and advisors. In *Cabot Wellington, LLC*, SEC No-Action Letter No 801-54670 (June 17, 2008), the SEC permitted the executive director of a family investment office who was not a sibling, spouse or lineal descendant of the family office's clients to invest in Family Office Funds created in reliance on Section 2(a)(51)(A)(ii) of the Investment Company Act of 1940 (IC Act). In addition, in *In re Slick Enterprises, Inc.*, SEC IA Release No. 2745 (June 20, 2008), the SEC permitted an exemption from registration for a Family Office under Section 202(a)(11)(G) of the Investment Advisers Act of 1940 (RIA Act) that, among other things, represented that it reserved the right to be owned "directly or indirectly" by members of the subject family.

Investment advisors and fund managers who serve or actually are Family Offices should be aware of the following information in light of the recent guidance provided by the SEC:

- In order for a Knowledgeable Employee (as defined in Rule 3a-5 of the IC Act) to invest in a Family Office Fund without running afoul of Rule 3(c)(7) of the IC Act, the family office should (1) indicate its willingness to have its Knowledgeable Employee's investment interests aligned with those of the family, (2) verify and confirm that the Knowledgeable Employee has primary responsibility for the family's investment decisions and (3) verify and confirm that the Knowledgeable Employee is a qualified purchaser and accredited investor.
- Funds which are formed for the purpose of investing in securities claiming Section 3(c)(7) relief should take particular care to verify that fund participants meet at least one of the definitions of "qualified purchaser" under Section 2(a)(51) of the IC Act.
- To preserve a Family Office's status under Section 202(a)(11) of the RIA Act, corporate documentation for a fund or other vehicle holding the interests or shares of a family office should clearly (a) define "indirect ownership" as it pertains to family members and (b) ensure that a majority of the board of directors and owners of the family office are required to actually fit the firm's chosen definition of "family members."

Links to the SEC's guidance may be found as follows:

- [Cabot Wellington](#)
- [Slick Enterprises](#)