INVESTMENT ADVISER ALERT
June 5, 2012

SEC CLARIFIES RULES ON A SINGLE INDIVIDUAL SERVING AS KEY EMPLOYEE TO MULTIPLE FAMILY OFFICES

Mr. Peter Adamson III sought to serve as a key employee (or a director, partner, manager, or trustee) to up to ten separate family offices (each representing a separate and distinct family) without registering as an investment adviser with the SEC in reliance on the family office exclusion rule of 202(a)(11)(G)-1 under the Investment Advisers Act of 1940 (the "Advisers Act"). On April 3, 2012, the staff of the SEC's Division of Investment Management issued a no-action letter denying relief to Adamson to qualify for the exclusion from the definition of "investment adviser" under the Advisers Act and thus denying him relief to qualify for exemption from registration with the SEC. The letter stated that the SEC may initiate an enforcement action against Mr. Adamson III if he proceeded with his current practice without registering with the SEC as an investment adviser.

Section 202(a)(11)(G) of the Advisers Act, which was added to the Advisers Act by the Dodd-Frank Act effective July 21, 2011, excludes any "family office" from the definition of "investment adviser," thus exempting such family office from registration with the SEC. The so-called "family office rule" (of Rule 202(a)(11)(G)-1 under the Advisers Act) defines a family office as a company (including its directors, partners, members, managers, trustees, and employees acting within the scope of their employment) that (i) has no clients other than "family clients," (ii) is wholly owned by family clients and is exclusively controlled (directly or indirectly) by one or more "family members" and/or "family entities" (i.e., any family trust or estate, non-profit or charitable organization or other family entity qualifying as a family client under the rule, other than key employees and their trusts), and (iii) does not hold itself out to the public as an investment adviser. In addition, according to the SEC's June 23, 2011 release adopting the rule (the "Adopting Release"), this "family office rule" does not include a family office that provides advisory services to multiple families (commonly referred to as a "multifamily office").

In its letter, the SEC staff denied no-action relief on the grounds that it was unclear how the proposed arrangement would not create a multifamily office, which falls outside of the scope of the family office exclusion rule. The staff pointed to the discussion in its Adopting Release stating that, if separate family offices established by unrelated families employ the same or substantially the same employees, they would create a de facto multifamily office. Because

Adamson would be serving as a key employee (or director, partner, manager, or trustee) of multiple family offices, he could be deemed to be managing a multifamily office and thus would be unable to rely on the family office exclusion rule and be exempt from SEC registration requirements.

On April 27, 2012, the SEC staff updated its responses to frequently asked questions ("FAQs") about the family office rule to provide that, "[i]f two or more families staff their family offices with the same or substantially the same employees that provide investment advice to the families, such employees would be managing a de facto multifamily office" and thus would not qualify for the family office exclusion, which is available only to single-family offices, and are required to register with the SEC as investment advisers.

For further discussion of the issues addressed in this memorandum, please contact our attorneys.

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