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The Impact of the Financial Regulatory Legislation on Family Offices

The Dodd-Frank Wall Street Reform and Consumer Regulation Act (“Dodd-Frank”) is now the law of the land. Like all investors and consumers, family offices will be affected by many provisions of the bill. However, there are specific provisions of Dodd-Frank that are of special relevance to family offices:

▶ The “small advisor” exception has been eliminated. Thus, family offices which otherwise resemble financial advisors but which have been relying on the fact that they advise fewer than 15 “clients” will no longer be able to rely on the exemption. On the other hand, the asset limit required for Federal jurisdiction has been raised to \$100 million, so smaller family offices may be able to claim this exemption. (They might still be required to register under state law.)

▶ A “family office” is not required to register as an investment advisor under Dodd-Frank, as the bill contains a specific exemption for family offices. However, the bill requires the SEC to define exactly what a family office is, and until the Commission has acted it is unclear which family offices will have to register and which will be exempt. In particular, there is concern that family offices which allow non-family executives to co-invest with the family may not be exempt in the future.

Registration as an RIA can be complex, expensive, and – worst of all – can compromise family privacy. For example, RIAs must complete a Form ADV in which they must disclose assets under advisement and many other matters. In addition, RIAs are subject to unannounced audits by SEC personnel, during which all materials in the office are subject to inspection.

It is still too early to know exactly how Dodd-Frank will affect family offices, or how families will respond to the increased regulatory, compliance and privacy issues. Already, however, we are observing these responses:

▶ Some family offices are already registered as investment advisors and have structured their affairs in ways that preserve family privacy, both in terms of required disclosures on the Form ADV and even during the unannounced audits the SEC performs on RIAs.

▶ Many observers think that a family office will eventually be defined as one which advises only lineal descendants, meaning that a family office which offers financial advice to step-children, in-laws or others would have to register. Family offices which advise more than just lineal descendants will likely adopt strategies to avoid registration, for example:

- Interest in private trust companies, which are subject to state, rather than Federal, regulation, has increased dramatically.
- Family offices which outsource the investment function to an independent RIA which also advises other families will not be subject to registration since they engage in no financial advisory activities. It may be necessary for these families to give full discretion to the outside advisor.

We will continue to monitor developments under Dodd-Frank and at the SEC and will report to you periodically. In the meantime, please do not hesitate to contact your Greycourt advisor for additional information.

Kind regards,

GREYCOURT & CO., INC.