

## Dixon, Andrew

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**From:** Fallon-Houle, Nancy  
**Sent:** Friday, October 15, 2010 12:40 AM  
**To:** Dixon, Andrew  
**Subject:** [ABA-BL-STATERECS] Proposed SEC Advisers Act Rule 202(a)(11)(G)-1 - Definitional Exception for "Family Offices" under Investment Advisers Act of 1940

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please download to "topics", Investment Advisor, call it "Family Office Exception from Definition for all Investment Advisor Purposes

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**From:** State Regulation of Securities Committee [mailto:BL-STATERECS@MAIL.ABANET.ORG] **On Behalf Of** Parness, Alan  
**Sent:** Thursday, October 14, 2010 12:35 PM  
**To:** BL-STATERECS@MAIL.ABANET.ORG  
**Subject:** [ABA-BL-STATERECS] Proposed SEC Advisers Act Rule 202(a)(11)(G)-1 - Definitional Exception for "Family Offices" under Investment Advisers Act of 1940

Just a quick correction of a misnomer in the caption of my e-mail of yesterday regarding proposed SEC Rule 202(a)(11)(G)-1 - the proposed rule isn't just an "exemption" from registration under the Advisers Act. Rather, it's intended to define the term "family office" for purposes of new Advisers Act Sec. 202(a)(11)(G), as added by Dodd-Frank Act Sec. 409(a), which excludes a "family office" (as defined by SEC rule, regulation or order in accordance with Dodd-Frank Act Sec. 409(b)) from the definition of the term "investment adviser" for all purposes of the Advisers Act. Thus, those "family offices" which qualify for this new exception will not only be exempt from SEC registration under Sec. 203, but will be out from under any and all provisions of the Advisers Act applicable to "investment advisers" (for example, certain of the antifraud provisions of Advisers Act Sec. 206 and the SEC's rules thereunder apply to any person who is an "investment adviser" by definition, irrespective of its registration status). Further, qualifying "family offices" and their associated persons will also be out from under registration (but not antifraud enforcement actions) under state Blue Sky laws, since Advisers Act Sec. 203A(b)(1)(B) provides, in relevant part, that state laws "requiring the registration, licensing or qualification as an investment adviser or supervised person of an investment adviser shall not apply to any person . . . that is not registered under section 203 *because that person is excepted from the definition of an investment adviser under section 202(a)(11).*" (At present, a family office exempt from registration under the Advisers Act by reason of Sec. 203(b)(3) or otherwise, or not qualifying for SEC registration by reason of Sec. 203A because its assets under management don't meet the requisite threshold, has to find definitional exceptions or registration exemptions under applicable state laws, or rely on the preemptive Advisers Act Sec. 222(d) "national de minimis standard"; as most of you know, the latter provision, as well as most state exceptions and exemptions, are unavailable if the adviser has a place of business in the particular state.)

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**From:** Parness, Alan  
**Sent:** Wednesday, October 13, 2010 5:13 PM  
**To:** 'BL-STATERECS@MAIL.ABANET.ORG'  
**Subject:** Proposed SEC Advisers Act Rule 202(a)(11)(G)-1 - Exemption for "Family Offices" under Investment Advisers Act of 1940

For those of you who may be interested in the status of "family offices" as "investment advisers" under the federal Investment Advisers Act of 1940, following is a link to a copy of SEC Rel. No. IA-3098 (10/12/10); the text of proposed Rule 202(a)(11)(G)-1, as required by Section 409 of the Dodd-Frank Act, appears on pp. 36-40 of the Release . Please note that comments on the proposal are due by 11/18/10.

<http://www.sec.gov/rules/proposed/2010/ia-3098.pdf>

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