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In-Laws and Their Siblings: Part of a “Family Office”?

When the SEC adopted the [Family Office Rule](#) to implement [Section 409](#) of the Dodd-Frank Act and exempt a "family office" from the definition of "investment adviser," it had to provide a definition of "family." Regrettably, the definition of [family member](#) begins with lineal descendants of a common ancestor . That has created unusual problems because, by using that singular reference point, the practical effect is that neither the common ancestor nor the wife of that common ancestor, as well as her parents and her siblings, will be treated as "family members," so the son or daughter of the common ancestor will not be able to include in their family office his or her mother's siblings (his or her aunts and uncles) or the children of those siblings (his or her nieces and nephews). This omission, often referred to in the family office community as the "distaff" issue, will occur and reoccur at each succeeding generation, and will uniformly adversely affect the in-law side of each lineal descendant's marriage. In fairness, the Family Office Rule does allow the common ancestor to be living or deceased, and the identity of the person who is being treated as the common ancestor may be changed over time so that the family office can evolve; moreover, it is possible to select a person who may be several generations above the current family members to "[serve a greater number of current collateral family members but fewer future lineal members](#)," but that does not solve the "distaff" problem. Since the Family Office Rule became effect in April 2012, four different families have sought exemptive orders from the SEC to permit their family office to continue giving investment advice to, for example, the sister of an in-law and her children, and the mother-in-law of a lineal descendant and her private foundation. *See*, Gruss & Co. Inc., [IA-3866](#) (Notice) and [IA-3883](#) (Order); Duncan Family Office, [IA-3867](#) (Notice) and [IA-3882](#) (Order); William E. Simon & Sons, LLC and New Vernon Advisors, Inc., [IA-3990](#) (Notice) and [IA-4001](#) (Order); and D-W Investment LLC, [IA-4066](#) (Notice) and [IA-4090](#) (Order). By some estimates, there are over 2,500 single family offices in the U.S. One wonders how many family offices will have to seek an exemptive order on a one-off basis before the SEC will decide to amend the Family Office Rule to deal with this situation. *See generally*, *Family Offices*, Ch. 59 in *Investment Adviser Regulation: A Step-by-Step Guide to Compliance and the Law* (PLI, 3rd ed. 2013).

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