UNLOCKING THE POTENTIAL OF FAMILY OFFICES

By Steven Thayer, Partner,

Family offices have long operated quietly in the U.S. investment landscape, relying on public and private managers to preserve and grow wealth. Recently, however, they've evolved into sophisticated investors, increasingly managing their own private market investments. Yet regulatory hurdles — especially those imposed by the Securities and Exchange Commission — have made collaboration among family offices difficult. It's time for the SEC to rethink its approach.

The Untapped Universe of Private Investments

The U.S. is home to over 33 million small businesses, from startups to mature private firms. Yet only about 15,000 are backed by traditional private equity (Pitchbook, July 2025). Meanwhile, the number of public companies has plummeted from nearly 9,000 in 1997 to under 4,000 in 2024 (Forbes, Feb. 2025). This leaves a vast pool of businesses underserved by capital markets.

For these small companies, raising capital is a complex process. Not only do they have to find investors interested in making an investment in their company, but they also have to comply with complex state and federal securities laws. While the SEC has tried to ease access — through Regulation D's Rule 506(c), Regulation A, and Regulation CF — it also faces pressure to protect investors from fraudsters like Bernie Madoff. Balancing investor protection with capital formation remains a persistent challenge.

Regulatory Barriers for Family Offices

Family offices face their own set of regulatory constraints. While the new family office exemption (FOE) allows them to manage money for "family clients" without registering as investment advisers (RIAs), it doesn't allow them to manage other people's money. They are also not exempt from broker-dealer (B/D) registration under the Securities Exchange Act of 1934. This means that when family offices solicit co-investors or pool funds with other families, they risk triggering both RIA and B/D registration requirements.

Despite these hurdles, family offices are eager to co-invest. According to Goldman Sachs' 2025 Family Office Investment Insights Report, collaboration among families is on the rise. Pooling capital allows them to share risk, reduce costs, and leverage collective research. But ironically, the more they collaborate, the more regulatory burdens they face.

This raises a fundamental question: Why regulate sophisticated family offices as if they were retail investors? The SEC's current framework — rooted in laws from the 1930s and 1940s — was designed to protect unsophisticated investors, not wealthy families with investment expertise and additional resources. It's time to change the rules.

A Call for Reform: Two Key Proposals

SEC Chairman Paul Atkins recently acknowledged the need to "facilitate capital formation and simplify the pathways for raising capital" (SEC, Statement on the Spring 2025 Regulatory Agenda, Sept. 4, 2025). This opens the door for meaningful change. Two reforms could make a significant impact:

1. Expand the FOE to Include a Family Office Fund Exemption
The current FOE allows families to manage their own money without registering as RIAs. But if one family manages a pooled fund with other families, it likely triggers RIA registration. A new exemption for "family office funds" — investment vehicles controlled and significantly funded by family offices — would solve that problem. These funds differ from traditional private equity funds, which are often managed by professionals who have much less skin in the game. Family offices, by contrast, seek co-investments where all parties have significant a significant investmentinterests. Expanding the FOE to cover these funds would encourage collaboration among families without requiring them to navigate complex registration rules.

Some family offices have accepted registration while others attempt to sidestep it by arguing that no one is managing another's money. A clear exemption would eliminate this ambiguity and promote more efficient capital pooling among families.

2. Create a Family Office Broker-Dealer Exemption
Many family offices may not even realize they're subject to B/D rules. If they regularly structure co-investments and solicit other families, however, they're technically offering securities — an activity that requires registration.

The SEC should carve out an exemption for family offices that broker deals they invest in. This is fundamentally different from traditional brokers who raise capital for others without investing themselves. The current framework discourages families from sharing opportunities due to the regulatory risk and securities liability associated with promoting the sale of securities.

As one attorney recently put it, "The last thing you want to be is a broker-dealer," citing the heavy compliance burden. A tailored exemption would remove this barrier and unlock more co-investment activity.

Why It Matters

Relaxing these rules would benefit both family offices and small businesses. Families could diversify risk, share research, and reduce costs. Small companies would gain access to much-needed capital. The result would be more innovation, job creation, and economic growth. Importantly, these reforms wouldn't compromise investor protection. Family offices are not retail investors — they're sophisticated entities with the expertise to evaluate risk. When families pool money, they're even better equipped to assess risk and opportunities. Treating them like everyday investors is a regulatory mismatch.

Family offices represent a powerful, underutilized source of capital for America's private businesses. By modernizing the family office exemption and creating new B/D exemptions, the SEC can help unlock billions of investment capita l— without sacrificing investor protection. It's time to let families invest like the institutions they've become.

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