

112TH CONGRESS  
1ST SESSION

# H. R. 2225

To amend the Investment Advisers Act of 1940 to add a definition of family office.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 2011

Mr. HENSARLING (for himself, Mr. BACHUS, Mrs. MALONEY, Mr. GARRETT, Mr. NEUGEBAUER, Mrs. CAPITO, and Mrs. BIGGERT) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Investment Advisers Act of 1940 to add a definition of family office.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds the following:

5 (1) Family offices are not of national concern  
6 in that their advice, counsel, publications, writings,  
7 analyses, and reports are not furnished or distrib-  
8 uted to clients on a retail basis, but are instead fur-  
9 nished or distributed only to persons who are mem-  
10 bers of a particular family.

1           (2) Family offices do not hold themselves out to  
2 the public as investment advisers.

3           (3) Family offices do not engage in the business  
4 of advising others, but instead provide a wide range  
5 of services to members of the family they serve, only  
6 one of which involves investment advice, for which  
7 they may receive compensation from the members of  
8 the family.

9           (4) Since the Investment Advisers Act of 1940  
10 was enacted, the Securities and Exchange Commis-  
11 sion has regularly issued orders to individual family  
12 offices exempting them from all of the provisions of  
13 the Investment Advisers Act of 1940.

14           (5) Section 409 of the Dodd-Frank Wall Street  
15 Reform and Consumer Protection Act expressly ex-  
16 empts family offices from all of the provisions of the  
17 Investment Advisers Act of 1940.

18           (6) It was the intent of Congress that section  
19 409 of the Dodd-Frank Wall Street Reform and  
20 Consumer Protection Act be interpreted broadly to  
21 encompass all family offices as they are currently or-  
22 ganized and operated, as well as to encompass  
23 changes in the organization and operation of family  
24 offices in the future.

1 **SEC. 2. FAMILY OFFICE DEFINITION.**

2 Section 202(a) of the Investment Advisers Act of  
3 1940 (15 U.S.C. 80b–2(a)) is amended—

4 (1) in paragraph (11)(G), in the matter added  
5 by section 409(a) of the Dodd-Frank Wall Street  
6 Reform and Consumer Protection Act, by striking “,  
7 as defined by rule, regulation, or order of the Com-  
8 mission, in accordance with the purposes of this  
9 title”;

10 (2) by redesignating the second paragraph (29),  
11 as added by section 770 of the Dodd-Frank Wall  
12 Street Reform and Consumer Protection Act, as  
13 paragraph (31); and

14 (3) by adding at the end the following new  
15 paragraph:

16 “(32) FAMILY OFFICE.—

17 “(A) IN GENERAL.—The term ‘family of-  
18 fice’ means a company (including any director,  
19 partner, trustee, or employee of such company,  
20 when acting in their respective capacities as  
21 such) that—

22 “(i) has no clients other than family  
23 clients;

24 “(ii) is—

25 “(I) owned, directly or indirectly,  
26 by,

1                   “(II) controlled, directly or indi-  
2                   rectly, by, or

3                   “(III) operated primarily for the  
4                   benefit of,  
5                   family clients; and

6                   “(iii) does not hold itself out to the  
7                   public as an investment adviser.

8                   “(B) GRANDFATHERING.—A person de-  
9                   scribed under section 409(b)(3) of the Dodd-  
10                  Frank Wall Street Reform and Consumer Pro-  
11                  tection Act, but who otherwise meets the re-  
12                  quirements under subparagraph (A), shall qual-  
13                  ify as a family office.

14                  “(C) DEFINITIONS.—For purposes of this  
15                  paragraph:

16                  “(i) CONTROL.—The term ‘control’  
17                  means the power to exercise a controlling  
18                  influence over the management or policies  
19                  of a company, unless such power is solely  
20                  the result of being an officer of such com-  
21                  pany.

22                  “(ii) FAMILY CLIENT.—The term  
23                  ‘family client’ means:

24                          “(I) Any family member.

25                          “(II) Any key employee.

1           “(III) Any charitable foundation,  
2 charitable organization, charitable  
3 trust, or other non-profit organization  
4 established or controlled, directly or  
5 indirectly, by persons one or more of  
6 whom is a family client.

7           “(IV) Any trust or estate funded  
8 exclusively by one or more family  
9 members or established primarily for  
10 the benefit of one or more family cli-  
11 ents.

12           “(V) Any limited liability com-  
13 pany, partnership, corporation, or  
14 other entity, if—

15           “(aa) such entity is major-  
16 ity-owned or controlled, directly  
17 or indirectly, by, or operated pri-  
18 marily for the benefit of, one or  
19 more family clients;

20           “(bb) the family office is  
21 giving investment advice to such  
22 entity; and

23           “(cc) persons who are not  
24 otherwise defined as a family cli-

1 ent do not own interests in such  
2 entity.

3 “(VI) Any former family mem-  
4 ber.

5 “(VII) Any former key employee,  
6 if, upon the termination of such indi-  
7 vidual’s employment by the family of-  
8 fice or family client, the former key  
9 employee shall not receive investment  
10 advice from the family office or the  
11 family client (or invest additional as-  
12 sets with a family office-advised trust,  
13 charitable foundation, or entity), other  
14 than with respect to assets advised,  
15 directly or indirectly, by the family of-  
16 fice or family client immediately prior  
17 to the termination of such individual’s  
18 employment, except that a former key  
19 employee shall be permitted to receive  
20 investment advice from the family of-  
21 fice with respect to additional invest-  
22 ments that the former key employee  
23 was contractually obligated to make,  
24 and that relate to a family office ad-  
25 vised investment existing, in each

1 case, prior to the time the person be-  
2 came a former key employee. For pur-  
3 poses of this subclause, the term ‘fam-  
4 ily office’ shall include any entity de-  
5 scribed under subclause (V).

6 “(iii) FAMILY MEMBER.—

7 “(I) IN GENERAL.—The term  
8 ‘family member’ means:

9 “(aa) Any natural person  
10 whose economic activities created  
11 or substantially contributed to  
12 the family’s wealth, and such  
13 person’s spouse.

14 “(bb) The siblings, parents,  
15 grandparents of a person de-  
16 scribed in item (aa).

17 “(cc) The spouse of a person  
18 described in item (bb).

19 “(dd) The siblings of a per-  
20 son described in item (bb) or  
21 (cc).

22 “(ee) The spouse of a person  
23 described in item (dd).

1                   “(ff) The lineal descendant  
2                   of a person described in item  
3                   (bb), (cc), (dd), or (ee).

4                   “(gg) The spouse of a per-  
5                   son described in item (ff).

6                   “(II) CONSTRUCTION.—For pur-  
7                   poses of this clause—

8                   “(aa) the term ‘lineal de-  
9                   scendant’ includes natural chil-  
10                  dren, adopted children, and step-  
11                  children;

12                  “(bb) the term ‘spouse’ in-  
13                  cludes spousal equivalents; and

14                  “(cc) the terms ‘siblings’,  
15                  ‘parents’, and ‘grandparents’ in-  
16                  clude step-siblings, step-parents,  
17                  and step-grandparents, respec-  
18                  tively.

19                  “(iv) FORMER FAMILY MEMBER.—The  
20                  term ‘former family member’ means a  
21                  spouse or a descendant who was a family  
22                  member but is no longer a family member  
23                  due to a divorce or other similar event.

24                  “(v) KEY EMPLOYEE.—The term ‘key  
25                  employee’ means any natural person (and



1 such person’s spouse or lineal descendant)  
2 who is an executive officer, director, trust-  
3 ee, general partner, or person serving in a  
4 similar capacity, of the family office or any  
5 employee of the family office (other than  
6 an employee performing solely clerical, sec-  
7 retarial, or administrative functions) who,  
8 in connection with his or her regular func-  
9 tions or duties, participates in the invest-  
10 ment activities of the family office. For  
11 purposes of this subclause, the term ‘fam-  
12 ily office’ shall include any entity described  
13 under clause (ii)(V).

14 “(vi) SPOUSAL EQUIVALENT.—The  
15 term ‘spousal equivalent’ means a cohabi-  
16 tant occupying a relationship generally  
17 equivalent to that of a spouse.

18 “(D) INVOLUNTARY EVENTS.—If—

19 “(i) a person that is not a family cli-  
20 ent becomes a client of the family office as  
21 a result of the death of a family member  
22 or key employee or other involuntary trans-  
23 fer from a family member or key employee,  
24 or

1                   “(ii) a person ceases to be a family  
2                   client,  
3                   that person shall be deemed to be a family cli-  
4                   ent until the end of the 1-year period beginning  
5                   on the date that it is both legally and prac-  
6                   tically feasible for the family office to transfer  
7                   the affected assets to such person, but in no  
8                   event earlier than 1 year from the date that it  
9                   becomes legally feasible to transfer the affected  
10                  assets unless it becomes practically feasible to  
11                  affect such a transfer sooner.”.

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