

Public Statements & Remarks

Statement of Commissioner Dan M. Berkovitz

CFTC Oversight of Family Offices Must be Strengthened

April 01, 2021

The collapse of Archegos Capital Management^[1] and the billions of dollars in losses to investors and other market participants is a vivid demonstration of the havoc that errant large investment vehicles called “family offices” can wreak on our financial markets.^[2] Family offices can be active in both securities and commodities markets. Unfortunately, in the last two years the CFTC has loosened its oversight of family offices. In 2019, and again in 2020, the Commodity Futures Trading Commission (CFTC) approved rules that exempted family offices from some of our most basic requirements. I objected to these exemptions at the time, warning in 2019 that “[t]he approval of [these rules] without any checks and balances on exempt family office CPOs [commodity pool operators] will increase risks to our markets and market participants.”^[3] The Archegos failure highlights the importance of strengthening the CFTC’s oversight of these large funds and preventing bad actors from trading in our markets.

A “family office” has nothing to do with ordinary families. Rather, it is an investment vehicle used by centimillionaires and billionaires to grow their wealth, reduce their taxes, and plan their estates.^[4] According to a 2019 report, the average wealth of family offices surveyed in North America was \$1.3 billion, with \$852 million in assets under management.^[5] As we have just seen, the failure of a large family office can cause significant harm to our financial markets.

Because family offices do not solicit investments from the public, they are generally exempt from certain CFTC regulations that relate to investor protection. But the CFTC strayed far beyond this rationale when it also exempted multimillionaire and billionaire family offices from basic requirements related to market protection and integrity.

In November 2019, the Commission exempted family offices operating in CFTC regulated markets from providing notice that they are exempt from CFTC registration requirements.^[6] All other entities claiming similar exemptions must provide notice. The information required would fit on a post-it note, and the CFTC estimated the annual cost of the filing to be merely \$28.50. There is no rational justification for exempting large family offices with billions of dollars under management from minimal notice requirements with relatively trivial costs. Without a notice filing, the Commission remains generally unaware of the very existence of these large commodity pools, is hampered in its ability to oversee their activities, and does not even know whom to contact should issues arise.

In July 2020, the Commission exempted persons in family offices from a new CFTC rule designed to foreclose bad actors from acting as CPOs if they are subject to statutory disqualification. In other words, even if a family office operator or one of its principals has been barred from CFTC markets, committed a felony involving commodity or securities laws, or has been found to have violated specified statutes involving embezzlement, theft, extortion, forgery, and fraud, they can remain exempt from CFTC registration.^[7] Thus, convicted felons, market manipulators, and other financial market miscreants can operate freely within the confines of a family office, unbeknownst to the CFTC. In my view, there is no reasonable justification for such a policy.

As I previously stated, disqualification should mean disqualification. In response to the 2020 rulemaking I stated:

[U]nder this set of new rules completed today, CPOs of family offices are exempt from registration, exempt from providing notice that they are using an exemption, and exempt from the statutory disqualifications that generally apply to all other CPOs. This triad of exemptions for CPOs of family offices leaves the Commission uniquely unaware of the activities and integrity of these entities.

To protect the integrity of the commodity markets, the Commission must be aware of and able to monitor the activities of large family offices. In order to do this the Commission should have basic information about family offices that are operating commodity pools. The qualifications of persons operating family offices should be no less than for persons operating other exempt and non-exempt pools. I urge the Commission to revisit these issues soon.

[1] Archegos is widely reported to be a “family office.” See, e.g., LinkedIn, Archegos Capital Management, LP, available at <https://www.linkedin.com/company/archegos-capital-management-lp/about/>; and Wikipedia, Archegos Capital Management, available at https://en.wikipedia.org/wiki/Archegos_Capital_Management.

[2] The forced de-levering of risky positions of Archegos is now estimated to have caused \$5 billion to \$10 billion in losses to prime brokers and significant losses to investors in the related stocks. Jan-Patrick Barnert and Marion Halftermeyer, *JPMorgan Says Banks’ Archegos Hit May Be Up to \$10 Billion*, Bloomberg, Mar. 30, 2021, <https://www.bloomberg.com/news/articles/2021-03-30/banks-may-take-up-to-10-billion-hit-on-archegos-loss-jpmorgan-kmw5xjkh>.

[3] Statement of Dan M Berkovitz, *Rulemaking to Provide Exemptive Relief for Family Office CPOs: Customer Protection Should be More Important than Relief for Billionaires*, (Nov. 25, 2019), <https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement112519>; Statement of Dan M. Berkovitz, *Prohibiting Exemptions from Commodity Pool Operator Registration for Persons Subject to Certain Statutory Disqualifications*, (June 4, 2020) (2020 Statement), <https://www.cftc.gov/PressRoom/SpeechesTestimony/berkovitzstatement060402b>. A CPO is a person who accepts funds from others for the purpose of trading contracts for future delivery or swaps in commodities. Commodity Exchange Act §1a(11).

[4] Securities and Exchange Commission (SEC), *SEC Adopts Rule Under Dodd-Frank Defining “Family Offices”* (June 22, 2011), <https://www.sec.gov/news/press/2011/2011-134.htm>; see also Kirby Rosplock, *The Complete Family Office Handbook, A Guide for Affluent Families and the Advisors Who Serve Them* (Bloomberg Press, 2014).

[5] Campden Research and UBS, *The Global Family Office Report 2019*, at 11, available at <https://www.ubs.com/global/en/wealth-management/uhnw/global-family-office-report/global-family-office-report-2019.html>.

[6] Registration and Compliance Requirements for Commodity Pool Operators (CPOs) and Commodity Trading Advisors: Family Offices and Exempt CPOs, 84 FR 67355 (Dec. 10, 2019).

[7] Registration and Compliance Requirements for Commodity Pool Operators and Commodity Trading Advisors: Prohibiting Exemptions on Behalf of Persons Subject to Certain Statutory Disqualifications, 85 FR 40877 (July 8, 2020). The new rule prohibits persons who are subject to a statutory disqualification under section 8a(2) of the Commodity Exchange Act from claiming an exemption from CPO registration under Regulation 4.13, and thus closed a loophole that enabled persons who were disqualified from registration to nonetheless operate as a CPO for a pool that is exempt from registration. The loophole remains open, however, with respect to operators of family offices.

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