

In an earlier Family Office Insight,¹ we discussed the potential applicability of Section 13(f) of the US Securities Exchange Act of 1934, as amended (the Exchange Act), to family offices that, because of the exclusion for “family offices,” are not required to register under the Investment Advisers Act of 1940, as amended (the Advisers Act).² As we discussed in that Insight, other aspects of US securities laws may nevertheless be applicable to family offices, even family offices that satisfy the requirements for exclusion from Advisers Act registration. One such potential “trap for the unwary” that we identified is the “institutional investment manager” filing requirement contained in Exchange Act Section 13(f).

In a nutshell, Section 13(f) requires any “institutional investment manager” that exercises investment discretion over the accounts of any other person holding “section 13(f) securities”³ with an aggregate fair market value of at least US\$100 million to make certain periodic filings with the Securities and Exchange Commission (SEC) on Form 13F. Section 13(f) applies to all “institutional investment managers,” regardless of whether they are registered as investment advisers under the Advisers Act. Therefore, a family office, even if it is not required to register under the Advisers Act, may nevertheless be an “institutional investment manager” for purposes of Section 13(f), and therefore be required to make filings on Form 13F.

With that as background, family offices that are subject to Exchange Act Section 13(f) should be aware of an expanded reporting obligation that will become effective on July 1, 2024.⁴ Each Form 13F filer will now be required to make an annual filing on Form N-PX to disclose its votes on any pay-related proposals presented to stockholders by the public companies in its investment portfolio. Previously, the Form N-PX filing requirement was only imposed on SEC-registered investment companies. These pay-related proposals include proposals requesting advisory stockholder votes on Section 14A executive compensation (“say-on-pay” proposals), Section 14A executive compensation vote frequency (“say-on-frequency” proposals) and Section 14A extraordinary transaction executive compensation proposals. A Form 13F filer must file Form N-PX if it possessed “voting power” over the relevant securities and “exercised” that voting power to influence how those securities were voted.

And although Form 13F only requires reporting in respect of “section 13(f) securities” (as identified on the SEC’s quarterly Form 13F List), Form N-PX reporting is not limited to securities on that list but applies to pay-related votes cast on all securities registered under Section 12 of the Exchange Act.

Next Steps and Other Considerations

Family offices that are required to file Form 13F will need to develop procedures to identify and keep a record of any pay-related proposals that are presented at their portfolio companies’ stockholder meetings – and how they cast their votes – so that they will be able to make accurate and timely filings of Form N-PX, which must be made annually by August 31 of each year, covering the filer’s say-on-pay voting record for the 12-month period ended June 30.

Further, family offices that are 13F filers should be aware that their Form N-PX filings will be available to the public through the SEC’s website. That means that a family office’s votes and voting patterns may be scrutinized in potentially new and unfamiliar ways, which may result in outreach or inquiries from company management, the media, proxy advisory firms or other institutional holders.

The interplay between federal investment adviser regulation and the Exchange Act’s rules regarding the regulation of trading markets is complex. Family offices and their professional advisors need to consider the applicability of the full range of securities laws as part of an effective and comprehensive compliance program.

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1 [Section 13\(f\)’s Disclosure Rules – A Trap for Family Offices?](#), Squire Patton Boggs Family Office Insights, August 2021

2 17 CFR § 275.202(a)(11)(G)-1

3 Generally speaking, these are equity securities that are traded on a securities exchange, certain equity options and warrants, shares of closed-end investment companies, and certain convertible debt securities.

4 [Final Rule: Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers \(sec.gov\)](#)