ASC grants novel exemptive relief to permit a family office to act as dealer, adviser and investment fund manager

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The Alberta Securities Commission (ASC) has granted exemptive relief to permit a family office to act as a dealer, adviser and investment fund manager for the family office and family members in an order granted to Paragon Capital Corp. Inc. (Paragon) in September 2024. Prior to the decision, an affiliate of the family office, ROQ Capital Partners Ltd. (ROQ), was registered to provide those services to the family office clients.

The exemptive relief granted to Paragon permits it to service “Office Clients” including Family Clients (defined below) and Legacy Clients (defined below) of its affiliate, ROQ, which is a registrant that is winding down and ceasing operations following the granting of the relief.

Why is this important?

This exemptive relief will be of interest to single family offices that provide investment services or engage in other registerable activities (such as investment fund management) for their Office Clients. Without similar exemptive relief, single family offices may require registration under securities laws before providing investment advisory or other investment-related services.

The relief will apply to single family offices that do not advertise or hold themselves out to the public to be an adviser, exempt market dealer, investment fund manager or similar but that do undertake and manage these activities on behalf of the family and the family’s interests. The relief would not apply to multi-family offices consisting of unrelated families.

Who qualifies as an “Office Client”?

Under the terms of the exemptive relief, a "Family Client" includes current and former family members, as well as key employees and their spouses or adult interdependent partners. It also covers non-profit organizations, charitable foundations, and charitable

trusts that are funded entirely by Family Clients. The term extends to the estate of any Family Client, as well as irrevocable trusts where Family Clients are the only beneficiaries. It also includes revocable trusts with Family Clients as the sole settlors and companies that are fully owned and operated for the exclusive benefit of Family Clients. Essentially, the term encompasses any individual, trust, or organization directly benefiting Family Clients. Former key employees and their spouse or adult interdependent partners are included, provided that they only receive advice related to assets that were previously advised by the Family Office before the end of that key employee's employment. Additionally, they can receive advice on investments they were contractually obligated to make, provided that these investments relate to Family Office-advised assets existing prior to the end of employment. However, they are prohibited from investing additional assets with any Family Office-advised trust, foundation, or entity.

A "Legacy Client" refers to up to five individuals who meet two main requirements: 1), they have been consistently served by Paragon or ROQ for at least 15 years; and 2), they either qualify as accredited investors (as defined in National Instrument 45-106 *Prospectus Exemptions*) or they sign a statement, similar to the Form 45-106F4 Risk Acknowledgement, evidencing their understanding that the investment carries risks and they could potentially lose their entire investment.

Together, “Family Clients” and “Legacy Clients” are “Office Clients” for the purpose of this relief.

Key conditions of the exemption

The exemptive relief granted to Paragon contains the following key conditions:

a. limiting registerable activities to Office Clients;
b. not marketing itself as a registered securities entity;
c. obtaining signed acknowledgment from clients that the Family Office is not registered under Alberta’s *Securities Act*;
d. retaining records for seven years after an Office Client is no longer served; and
e. reporting and updating Legacy Client information to the ASC.

Conclusion

The exemptive relief highlights that the activities of family offices may trigger the application of registration requirements under securities laws depending on the nature and scope of those activities. It remains to be seen if other CSA members will be willing to grant similar exemptions, but the Paragon relief suggests that the door may now be open. We encourage all family offices to review this relief carefully and consider the application of securities laws to their activities, while also recognizing that the registration analysis can be quite fact specific.

For family offices considering the application of securities laws to their business, our experienced team is ready to provide expert guidance and customized legal solutions.

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