

Title: The Financial Fraud of the Entire Unregulated & Self-Regulated U.S. Stock Market filled with Massive LoopHoles gives "Exemptions & Exclusions" to FRAUDSTERS from all requirements by restructuring as a "Family Office." ■■■ This is why the SEC is a total failure.

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## Background

In late March 2021 Archegos Capital Management and its investment bank lenders started liquidating huge stock positions at enormous losses, causing considerable turbulence in the capital markets. The defaults by Archegos resulting from its use of, and economic exposure to, equity total return swaps with brokers—swaps not then and not now subject to regulation by the SEC—caused several large broker-dealers to incur significant losses. Six major banks are reported to have lost more than \$10 billion when Archegos defaulted on a margin call in March 2021.

The use of equity total return swaps allowed Archegos to receive economic exposure to the relevant stocks without directly owning them, thus avoiding direct-ownership-based disclosure requirements. These losses are now subjecting many single family offices to increased and unwanted legislative and regulatory scrutiny simply because of the manner in which such offices are organized.

It appears that the equity total return swaps used by Archegos were not reported because, under the current rules, total return swaps are exempt from many reporting requirements under the federal securities and commodities laws, regardless of whether Archegos was an exempt family office or a registered investment adviser.

Nonetheless, because Archegos has said that it operated as a single family office, both Democratic legislators and federal regulators at the CFTC and the SEC have raised questions about whether Archegos properly qualified for the family office exclusion and whether the scope of the family office exclusion under the Dodd-Frank Act should be narrowed or repealed altogether. They make this case even though family offices are investment firms that solely manage the wealth of family clients or the manager's own money.

Some commentators, asserting somewhat hyperbolically that unregulated family offices threaten to sink the US economy, have proposed subjecting most, if not all, family offices to regulation as investment advisers under the Investment Advisers Act of 1940 (Public Law 76-768). Critics of this generation of family offices argue that many successful hedge funds closed their doors to external money and restructured as a family office as a way to avoid federal regulation.

On May 6, 2021, in testimony before the House Financial Services Committee, SEC Chairman Gary Gensler noted that: "At the core of that story was Archegos' use of total return swaps based on underlying stocks and significant exposure that the prime brokers had to the family office. Under Dodd-Frank, Congress gave the SEC rulemaking authority to extend beneficial ownership reporting requirements to total return swaps and other security-based swaps. Among other things, I've asked staff to consider recommendations for the Commission about whether to include total return swaps and other security-based swaps under new disclosure requirements, and if so how."

Moreover, the SEC has identified "Amendments to the Family Office Rule" as one of its key regulatory priorities for 2021. Nonetheless, the SEC has yet to implement any new disclosure requirements for total return swaps or modified any rules with respect to family offices.

Similarly, on May 1, 2021, CFTC Commissioner Berkowitz stated, "The Archegos failure highlights the importance of strengthening the Commodity Futures Trading Commission's (CFTC) oversight of [family offices]."

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) gave the SEC broad rulemaking authority to exempt family offices from the Investment Advisers Act of 1940. Section 202(a)(11)(G) of the Investment Advisers Act excludes from the definition of an investment adviser, and therefore from all of the requirements of that Act, "any family office, as defined by rule, regulation, or order of the Commission."