March 31, 2021

The Honorable Allison Herren Lee
Acting Chair
The U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Acting Chair Lee,

We write today to urge the Securities and Exchange Commission (SEC) to act urgently to improve transparency with enhanced 13F disclosures and investigate any regulatory gaps created by the registration exemption for large family offices. The recent market volatility stemming from Archegos Capital highlights long-standing gaps in the data disclosed by private funds.[1] The actions of Archegos also underscore the ways that certain hedge funds utilize derivatives in order to avoid the disclosures that are required on Form 13F.

Background

Despite Archegos' founder and co-CEO Sung Kook ("Bill") Hwang settling charges with the SEC in 2012 related to insider trading at Tiger Asia Management,[2] he was able to launch his family office, Archegos Capital. Archegos has never filed a single form with the SEC due to an exemption in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), which exempts family offices managing solely their own finances from registering under the Investment Advisers Act of 1940.

Archegos reportedly managed up to $10 billion of the Hwang family's wealth[3] but due to generous arrangements with banks Goldman Sachs, Morgan Stanley, Credit Suisse, and Nomura, the fund was able to borrow and hold economic interests of many multiples its total size across concentrated positions in US and Chinese media and technology companies. Due to the exemption in Dodd-Frank, Archegos never filed a positions report with the SEC, even

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[1] Gara, Antoine. Forbes. The Firm Behind the $30 Billion Yardsale Shaking Financial Markets. Mar 29, 2021. https://bit.ly/39u0etG
[2] Securities and Exchange Commission. Hedge Fund Manager to Pay $44 Million for Illegal Trading in Chinese Bank Stocks. Dec 12, 2012. https://bit.ly/3rGmWFt
[3] Delevingne, Lawrence. Reuters. Comeback quashed for faith-driven investor Bill Hwang. Mar 29, 2021. https://reut.rs/3fsdd32

though it held greater than a 10% economic interest of a company's total shares in some instances.[4]

While Archegos was a family fund, some hedge funds use the same kinds of derivatives that Archegos employed in order to avoid disclosures. Archegos held Total Return Swaps (TRS) and Contract-for-Differences (CFDs) in ViacomCBS Inc., Discovery, Farfetch, GSX Techedu, Tencent Music Entertainment Group, Baidu, and IQIYI, among others.[5]

Total Return Swaps are a derivative that tracks the performance of a stock, but unlike stocks, they are not currently required to be disclosed on the Form 13F.[6] In a TRS, one party makes payments based on a pre-set rate, while the other party makes payments based on the return of an underlying "reference" asset. This arrangement allows the receiving party to receive all the economic benefits of a reference asset (like a stock's income and capital gains), without actually owning the asset.

The SEC Must Act to Improve Transparency with Enhanced 13F Disclosures

In order to give regulators, market participants, and the broader public a more adequate window into the activities of hedge funds the SEC must expand both the frequency of Form 13F reporting, and the range of financial products required to be disclosed on this form

We suggest that the Commission move quickly to amend the required Form 13F disclosures to include disclosures of:

- Short stock sales;
- Short option positions; and
- Derivatives that mimic the behavior of stocks, such as Total Return Swaps, also known as Equity Swaps.

The SEC Should Evaluate the Regulatory Gap Created by the Registration Exemption for Family Offices

The Commission should evaluate if the registration exemption that family offices enjoy under Dodd-Frank is creating regulatory blind spots. In recent years, several former hedge fund managers such as Leon Cooperman, David Tepper, and John Paulson have converted their funds into family offices to intentionally keep a lower profile.[7] Yet functionally, as this latest

[4] Chung, Juliet and Farrell, Maureen. Wall Street Journal. Ex-Tiger Asia Founder Triggers $30 Billion in Large Stock Sales. Mar 28, 2021. https://on.wsj.com/2PpaNYb
[5] Chung, Juliet and Patrick, Margot. Wall Street Journal. What is Archegos and How Did It Rattle the Stock Market? Mar 30, 2021. https://on.wsj.com/31AS2DM
[6] Securities and Exchange Commission. Frequently Asked Question About Form 13F. Feb 24, 2020. https://bit.ly/3m975Ol
[7] Watts, William. Marketwatch. David Tepper is the latest hedge-fund manager heavyweight to go the family office route. May 23, 2019. https://on.mktw.net/2O8tleG

instance of market volatility with Archegos has shown, family offices behave very similarly to hedge funds.

Over 10,000 family offices manage nearly $6 trillion in assets[8] and as data from Bloomberg shows, a handful of them also are highly leveraged.[9] The average family office manages around $917 million.[10]

Archegos's size, magnified by the large amounts of leverage provided by the banks, had significant consequences both for its lenders and for other shareholders. In addition to the estimated $10 billion in losses for its bank lenders,[11] companies such as ViacomCBS have seen over 50% of their stock price wiped out in a matter of days.

Given the consequences that highly levered family offices can have for other investors and companies, the Commission should direct its advisory committees to investigate whether there are ways to plug the regulatory gaps for family offices managing more than $1 billion.

Conclusion

The Commission must urgently move to end the existing loopholes in its Form 13-F disclosures and study the impact of the reporting exemptions for large family offices. There is no reason why large investors whose decisions can significantly impact other investors and companies should be able avoid the same scrutiny other investors face simply because of how they choose to structure their trade or their investment firm.

Sincerely,

Americans for Financial Reform

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[8] Price, Michelle and Delevingne, Lawrence. Reuters. Why Archegos Capital was in U.S. regulators' blind spot. Mar 29, 2021. https://reut.rs/3drtC5d
[9] Feng, Venus. Bloomberg News. Archegos Fiasco Is Latest Reminder Super-Rich Love Leverage. Mar 30, 2021. https://bloom.bg/3cEggU1
[10] UBS. Global Family Office Report 2019. https://bit.ly/39st0uQ
[11] Barnert, Jan-Patrick and Halftermeyer, Marion. Bloomberg News. JPMorgan Says Banks' Archegos Hit May Be Up to $10 Billion. Mar 30, 2021. https://bloom.bg/3cCdw9t