UBS Family Office Quarterly

A Family Office Solutions publication

Second Quarter 2024

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Introduction

We appreciate the positive reception for our inaugural Family Office Quarterly and are pleased to share the second edition with you. Our intent is to advance the family office industry and with your insights, we are doing just that.

This edition brings you an array of relevant topics, starting with some thoughts from our UBS Chief Investment Office. You'll find an overview of the Corporate Transparency Act, which affects many family offices and their family-owned entities. Experts from UBS Advanced Planning provide key considerations for family offices looking to ensure compliance.

We also have a fresh perspective from Business Consulting Resources, with a member of the next generation in a family enterprise providing insights to help other family enterprises navigate their generational complexities. In addition, we offer a fresh take on how family offices can develop a more effective next-generation engagement strategy.

On the operations front, going serverless is now recognized as a best practice and InfoGrate shares what family offices need to consider before taking that path. When it comes to seamlessly blending legal, strategic and familial considerations, Major, Lindsay & Africa weighs in on the benefits of investing in the family office general counsel.

You'll also find a conversation with January Ventures on important questions and considerations to help family offices evaluate prospective funds and emerging managers.

As we look to move the industry forward, we want to hear from you. If there is a topic you would like to see addressed or learn more about, please let us know—this is how we will drive the industry forward.

Best regards,

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Investment outlook

ElectionWatch 2024

Implications for the economy, investments and taxes

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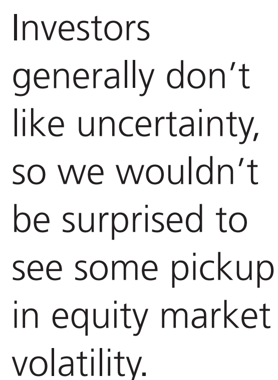
The general election campaign is starting early this year, and we expect it to be a highly contentious one. A replay of the last election is now all but certain with two candidates who have competing world views on issues ranging from taxation to industry regulation to foreign policy.

We take a look at the potential market implications of the four most likely election outcomes, dive deeper into the impact of the election on a tense geopolitical landscape, and share ways to prepare for potential tax changes.

Trump and Biden: Two divergent paths

There are significant market implications arising from the stark contrast in the policies promulgated by the two presidential candidates, Joe Biden and Donald Trump. While we are obliged to remind investors that portfolio construction is best treated as an apolitical exercise, the next eight months are likely to be exceptionally distracting. Incessant media coverage will be the order of the day, particularly in the seven states that are likely to decide the outcome. Investors generally don't like uncertainty, so we wouldn't be surprised to see some pickup in equity market volatility as the election nears. But bear in mind that government policy is just one of the many factors—Fed actions, inflation, corporate profit growth, just to name a few—that can influence the markets.

The ability of either presidential candidate to pursue a robust legislative agenda in 2025 will depend upon the outcome of congressional races. Republicans have the edge in the race to control the Senate as they are obliged in this cycle to defend fewer seats and are well positioned in the states that are holding elections for the upper chamber. The House of Representatives is more difficult to predict, but regardless of who ends up with the gavel, the margin of control is expected to remain narrow.



Given the high degree of partisanship and the expectation that majority control in both chambers will be slim, it will be difficult for either party to pass groundbreaking legislation in the absence of a unified government. Neither party has exhibited much appetite for tackling entitlement reform, and concerns over the size of the federal deficit have increased in the past two years, which will complicate efforts to pass the obligatory tax bill. The personal tax provisions embodied in the Tax Cuts and Jobs Act are scheduled to expire at the end of 2025, so both parties will be anxious to leverage the necessity to pass a tax bill to advance their own policy agenda.

The increase in federal budget deficits and interest rates in recent years leaves much less "fiscal space" for Congress to embark on significant fiscal expansion through tax cuts or spending increases. So this will likely be a much greater constraint on lawmakers than it has been after the last two presidential elections.

Geopolitics also loom large

One area where the president has an outsize impact regardless of the makeup of Congress comes on the geopolitical front. Geopolitics will cast perhaps an even greater shadow than usual over the 2024 US presidential election. With war raging in Ukraine and Gaza, the US has been unable to reach a consensus on whether to respond with additional financial and material assistance. America's enduring commitment to its transatlantic alliances has come under scrutiny, and tensions in the US-China bilateral relationship remain elevated. The porous southern border with Mexico has become a major campaign issue. Voters are exhibiting fatigue over the lengthy list of US commitments around the world. Resistance to foreign entanglements is growing, with profound implications for world order in the 21st century.

At a recent campaign event, Donald Trump declared that he would encourage Russia to "do whatever the hell they want" to NATO members who were delinquent in their financial obligations. His reluctance to support NATO may stem from a belief that the financial demands have become too great while America's infrastructure is often in disrepair. If Trump were to withdraw from the alliance over the Senate's objections, funding to withdraw would be limited until two-thirds of both chambers of Congress agreed to make the necessary appropriation.[1]

> Geopolitics will cast perhaps an even greater shadow than usual over the 2024 US presidential election.

Trump has also publicly floated the idea of a universal 10% tariff on all imported goods and a targeted tariff in excess of 60% on shipments from China, which would constitute an extraordinary tax hike of roughly USD 300 billion in each instance. The likely consequences for this are supply chain disruption and retaliatory actions by other nations. It would also undermine the Fed's efforts to reduce inflation.

Still, it is not unusual for a candidate to exaggerate geopolitical threats during a presidential campaign as a way to undermine voter confidence in a competitor. Look no further than John F. Kennedy's criticism of the Eisenhower administration over a perceived gap in the country's ballistic missile technology (i.e., the "missile gap"), or Jimmy Carter's criticism of the Ford administration over perceived mismanagement of Washington's bilateral relationship with Moscow.

American voters traditionally have placed a higher value on a presidential candidate's leadership qualities than on whether they agree with a specific foreign policy platform.[2] To the extent they believe that a candidate will vigorously defend American interests abroad, they will overlook many of the details that make a specific policy potentially untenable or counterproductive. Trump intuitively understands this, and he is willing to make what some observers consider to be outrageous remarks to draw a sharper distinction between himself and Joe Biden.

[1] Bryant Harris, "With eyes on Trump, Senate votes to make NATO withdrawal harder," *Defense News*, 19 July 2023.
[2] For an excellent summation of the distinctions drawn by American voters regarding foreign policy, see Jeffrey A. Friedman, "Foreign Policy and Presidential Elections: Why Voters Don't Just Care About 'The Economy, Stupid!'" Cornell University Press, 6 December 2023.

Investment implications of potential election outcomes

Overall, we see four possible election outcomes. Below we summarize what these could mean for policy, the economy and markets.

Blue Sweep

A Democratic sweep would likely be the most negative outcome for equity markets primarily due to a higher probability of higher corporate tax rates. The expiration of some 2017 personal tax cuts could also be a small drag on consumer spending. Regulatory pressures could increase in some industries, but this would generally be more of an extension of the current status quo.

Biden with split Congress

If Biden wins but Congress is split, we would expect much more limited policy changes, and therefore a more muted impact on financial markets. A Biden administration would be obliged to rely on executive action and regulatory oversight to a great degree.

Red Sweep

An extension of the 2017 tax cuts would be likely with a possible further reduction in corporate tax rates. Funding for these initiatives might come from a reduction in support for green energy provisions of the Inflation Reduction Act. Equity markets would likely cheer lower taxes and lighter regulation, but this could be partially offset by concerns about the costs and inflation impacts of higher tariffs and trade wars. Interest rates and the dollar would likely rise initially. Financials stand out as key potential beneficiaries in this scenario due to lighter regulation.

Trump with split Congress

With major fiscal policy changes blocked by a split Congress, higher tariffs and lighter regulation would likely be the hallmarks of this election outcome. Overall, these two forces would have a mixed impact on equity markets. The dollar and interest rates would likely rise modestly. Financials would likely be key beneficiaries of lighter regulation.

Preparing for potential tax changes

Outside of the implications for specific asset classes, changes in the policy environment can also bring changes to the tax landscape.

Presidential budgets often encounter resistance from members of Congress and typically do not become law. However, they are a useful guide in ascertaining the incumbent president's policy priorities in an election year. President Biden released his proposed budget for fiscal year 2025 last week. In doing so, he sketched out a fiscal policy that raises taxes on wealthier Americans and corporations. Former President Trump is likely to advocate a contrary set of fiscal policies, including the preservation of tax cuts enacted in 2017.

Regardless of whom voters decide to return to office, the accumulated federal deficit is likely to serve as an ever larger constraint on future fiscal policy. As interest rates have risen, it has become progressively more expensive to finance the federal deficit. According to fiscal data provided by the US Treasury, 16% of total federal spending in the month of February was dedicated to interest payments, thereby crowding out other expenditures.[3] While it's too early to know when taxes will rise, we suggest four strategies to help manage future tax liabilities, regardless of the outcome of this year's election.

[3] United States Treasury, Fiscal Data, 12 March 2024. See fiscaldata.treasury.gov.

1. **Enhance flexibility by diversifying tax treatments.** Spreading your wealth across multiple tax treatments (taxable, tax-deferred or tax-exempt) will give you the option to withdraw from your retirement funds in whichever sequence is more tax-efficient year to year. Place less tax-efficient vehicles with ordinary or short-term gains into tax-deferred or exempt accounts.
2. **Continue deferring capital gains (when it makes sense).** Investors with longer time horizons will often be better off deferring capital gains rather than attempting to lock in a potentially lower tax rate today—especially for investments with higher expected return or smaller increases in the capital gains tax rate. Utilizing tax loss harvesting strategies has become an essential tool to maximize after-tax returns.
3. **Accelerate lifetime gifting.** Looming reductions to the lifetime gift and estate tax exemption create a "use-it-or-lose-it" opportunity to potentially save millions in estate taxes. Strategic lifetime gifting is imperative if you want to protect those assets—and their appreciation—from being included in your taxable estate. Completing gifts today will help you utilize the historically high exemption before it's too late. Without congressional action, the estate tax exemption will be cut by ~50%.
4. **Don't wait to review your estate plan.** Waiting to take action until the election results are clear can prolong the estate planning process, as trust and estate lawyers will likely be overwhelmed with other families seeking similar planning advice. Proactively engaging with your estate attorney, financial advisor and accountant will make sure that you have access to these key resources.

How likely is the wealth tax in the future?

Another hot topic in the realm of taxes in recent years has been the possibility of a wealth tax. Wealth disparity has increased in the US, and progressive politicians at all levels of government have put forth various proposals to levy higher taxes on the nation's wealthier residents.

At the 54th annual meeting of the World Economic Forum in Davos in January, political and business leaders were presented with an open letter from 250 wealthy individuals. Titled "Proud to Pay More," the letter created a minor sensation by invoking the need for higher taxation on the world's wealthiest people. While it's difficult to argue with the sentiment that taxation is the price we pay for a civilized society, tax payments to the IRS still must rank among the least favorite tasks for most Americans.[4] According to survey data produced by the IRS, 93% of US taxpayers view the payment of their fair share of taxes as a civic duty. We're willing to concede the accuracy of the data as more than wishful thinking, but we suspect there's more room for argument regarding what constitutes as "fair share."

Possible outcomes and unintended consequences

The Supreme Court could uphold the lower court ruling, which would open the door for the implementation of wealth taxes. On the other hand, it could overrule the lower court and effectively close the door on wealth taxes.

As noted in Figure 4, the levy of a wealth tax in the US could result in various outcomes. Similar to the current tax framework, those seeking to avoid paying taxes may find alternative ways to substitute or shift their assets into alternative means that are more difficult to monitor, are exempt from the wealth tax, or are less susceptible to accurate or timely measurements. Scholars have noted that changes in tax law affect entrepreneurial risk-taking and the manner in which entrepreneurs claim ownership interest in a company.[5] Another notes that a wealth tax in the US could lead to some high net worth individuals keeping their businesses private, rather than going public, or issuing nonstandard, less transparent types of stock because a more transparent valuation would lead to a larger wealth tax liability for their shareholders.[6] Some economists have opined that there is no existing data pointing to how likely this is to occur and what enforcement responses might constrain it.[7]

[4] Oliver Wendell Holmes.
[5] Julie Cullen and Roger Gordon, *Journal of Public Economics,* 2007, vol. 91, issue 7–8, pp. 1479–1505.
[6] Daniel Hemel, "Taxing Wealth in an Uncertain World," *Public Law and Legal Theory Working Paper Series*, No. 729, 2019.
[7] Florian Scheuer and Joel Slemrod, "Taxing Our Wealth," *Journal of Economic Perspectives*, 35 (1): 207–30, 2021.

Figure 4: Frequently debated wealth considerations

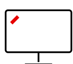
Advocates	Critics
More comprehensive revenue base: Taxes a broader wealth base than currently levied under income tax system (including items that wealthy individuals have, in theory, sheltered from taxation).	**Complicated methodology to asset valuation:** 1. Who is qualified to evaluate or value assets? 2. What are defined assets? Financial (stocks, bonds), nonfinancial (artwork, privately held businesses, cars), intangible property (copyrights, patents). 3. When are assets valued? Start of year, end of year or an average for the year, as asset values can be volatile or accumulated over the course of a year. If one bought an asset during the year, are they taxed on it for the entire year, or is it prorated?
More stable revenue generation: Taxing a broader base may result in more consistent revenues given the diversified items taxed. The current income tax system (and thus revenues generated) can be volatile given their reliance on the economy and stock market.	**Administratively complex and costly:** Difficult to enforce, track and monitor compliance. In addition, the IRS would need increased funding to: 1. Educate employees regarding the accuracy of net worth valuations; 2. Increase auditing procedures for applicable taxpayers; and 3. Hire additional IRS auditors.
More progressive: Mitigates wealth inequality by reducing economic disparities.	**Double taxation:** Earned income is taxed when earned and would be taxed again as a form of wealth. If income was saved, it could theoretically be taxed twice in the same year.
Increased funding: Expected to generate additional monies to support funding for social programs, infrastructure, deficit reduction and government operations.	**Capital flight:** Residents could relocate to lower-taxing states or countries.
Reduced loopholes: Prevents deferral of capital gains, does away with "step-up basis," and seeks to prohibit wealthy individuals from, or reduce their recourse to, sheltering assets from taxation.	**Reduced business creation and savings:** A wealth tax may reduce the capital available for entrepreneurs responsible for business creation. It may also discourage savings and encourage consumption.
	Liquidity concerns: A significant wealth tax bill could require assets to be sold in order to pay the tax (e.g., if a large percentage of an individual's wealth is based upon non-revenue-generating assets).

Where does the wealth tax stand?

Wealth taxes can be implemented in many forms, at various income levels and at differing tax rates. The idea of imposing a wealth tax on unrealized income appears to be gaining momentum in the US, and investors should remain aware of possible implications. While it appears unlikely to be enacted at this time, any successful implementation would most likely be subject to future litigation. CIO will continue to monitor the legislative landscape and report any meaningful changes to current tax policy as it relates to the taxation of unrealized capital gains.

Explore more

For more insights into our views on the election and potential investment implications, please visit ubs.com/ElectionWatch



To stay up-to-date with in-depth reports and market commentary from the UBS Chief Investment Office, please visit our Investment research site.

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Solita is Chief Investment Officer Americas for UBS Global Wealth Management, where she oversees both the CIO Research and Investment Solutions businesses, with over USD 1.5 trillion in total invested assets. Frequently featured on CNBC, Bloomberg and the *Wall Street Journal,* Solita is a member of the Aspen Global Leadership Network and the Global Advisory Council for the Wilson Center. Solita holds an M.B.A. from the Stern School of Business at New York University and a B.A. in economics and history from Brandeis University.

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Tom is Head of Fixed Income and Municipal Securities for the UBS Chief Investment Office, where he manages an interdisciplinary team covering taxable and tax-exempt strategy, corporate credit, preferred securities, closed end funds and municipal bonds. With 37 years in the fixed income markets, he served as CEO of National Public Finance Guarantee Corporation and held a number of positions at MBIA Insurance Corp. Tom holds a master's degree from the George Washington University and a bachelor's degree from the State University of New York at Albany.

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Beyond investments

An overview of the Corporate Transparency Act

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Under the Corporate Transparency Act, many family offices are now subject to beneficial ownership information reporting obligations.[1] Many other entities used by families in their wealth structures are likewise now subject to these reporting obligations.

Consequently, many family offices and other family-controlled entities must report information about their beneficial owners, who are the individuals who directly or indirectly own or control the entity. These reporting obligations, which are expansive and complex, generally became effective January 1, 2024.[2] These reporting obligations create new compliance responsibilities for family offices and certain entities they are charged to manage or administer.[3]

Reporting companies

Under the Corporate Transparency Act, reporting companies—which includes many family offices and other family-controlled entities—must file beneficial ownership information reports (sometimes called BOI reports) with the Financial Crimes Enforcement Network (FinCEN).[4] There are two types of reporting companies: (1) domestic reporting companies; and (2) foreign reporting companies.[5]

Many family offices must report information about their beneficial owners—the individuals who directly or indirectly own or control the entity.

A domestic reporting company generally is a corporation, limited liability company or other entity created by the filing of a document with a secretary of state or similar office of a jurisdiction within the United States.[6] Thus, in many cases, a limited partnership formed within the United States is a domestic reporting company.

A foreign reporting company generally is a corporation, limited liability company or other entity formed under the law of a foreign jurisdiction and is registered to do business within the United States.[7]

[1] See, generally, 31 USC § 5336.
[2] 31 CFR § 1010.380(a)(1).
[3] In addition to these federal reporting obligations, New York enacted the LLC Transparency Act, which requires certain limited liability companies formed or registered in New York to report information on their beneficial owners to the state. New York Laws of 2023, ch. 772. The New York law, which partially piggybacks on the *Corporate Transparency Act*, takes effect December 21, 2024. New York Laws of 2023, ch. 772, § 10. For a discussion of the LLC Transparency Act, see Todd D. Mayo, *New York Enacts LLC Transparency Act, Requiring Disclosure of Limited Liability Companies' Beneficial Owners* (a publication of the UBS Advanced Planning Group).
[4] 31 USC § 5336(b)(1).
[5] 31 CFR § 1010.380(c)(1).
[6] 31 CFR § 1010.380(c)(1)(i).
[7] 31 CFR § 1010.380(c)(1)(ii).

Trusts

A trust typically isn't a reporting company.[8] Accordingly, a trust typically won't have any obligation to file beneficial ownership information reports. If, however, a trust holds an ownership interest in a reporting company, one or more of the trust's settlors, beneficiaries, trustees, trust advisors and trust protectors may be beneficial owners of the company (because they indirectly own or control the company), and the company would thus have to provide information about them in its beneficial ownership information reports.[9]

> A trust typically won't have to file beneficial ownership information reports—unless it has an ownership interest in a reporting company.

Exemptions

Certain entities aren't reporting companies because they qualify for an exemption.[10] There are more than two dozen exemptions. For family offices, the most relevant exemptions generally are those for:

- Large operating companies
- Banks
- Registered investment advisers
- Tax-exempt organizations
- Inactive entities

Large operating companies

An entity is not a reporting company if it has more than 20 full-time employees, has more than $5 million of gross receipts and meets certain other requirements.[11] In some cases, a family office or a family-owned business may qualify for this exemption.

Banks

A bank isn't a reporting company.[12] Under this exemption, a private trust company isn't a reporting company (because it qualifies as a bank) if (1) it is state-chartered (i.e., a licensed private trust company) and (2) a substantial portion of its activities involves serving as a trustee of the family's trusts or otherwise exercising fiduciary powers.[13] An unlicensed private trust company doesn't qualify for this exemption and thus is a reporting company unless it qualifies for another exemption.[14]

Registered investment advisers

A registered investment adviser isn't a reporting company.[15] Accordingly, a family office that's a registered investment adviser isn't a reporting company. Of course, many family offices aren't registered investment advisers, because they qualify for the family office exception.[16]

[8] See 31 CFR § 1010.380(c).
[9] 31 CFR § 1010.380(d)(2)(ii)(C).
[10] 31 CFR § 1010.380(c)(2).
[11] 31 CFR § 1010.380(c)(2)(xxi).
[12] 31 CFR § 1010.380(c)(2)(iii).
[13] See 15 USC § 80a-2(a)(5).
[14] For a discussion of private trust companies, see Ann Bjerke and Todd D. Mayo, *Private Trust Companies* (a publication of the UBS Advanced Planning Group).
[15] 31 CFR § 1010.380(c)(2)(x).
[16] See 17 CFR § 275.202(a)(11)(G)-1. For a discussion of the family office exception, see Ann Bjerke, David Leibell and Brian Hans, *Building a Family Office to Steward Family Wealth and Values* (a publication of the UBS Advanced Planning Group and UBS Family Office Solutions).

Tax-exempt organizations

A tax-exempt 501(c) organization isn't a reporting company.[17] Consequently, private foundations and 501(c)(4) organizations (also called social welfare organizations) are not reporting companies.[18]

Inactive entities

An entity isn't a reporting company if it was formed on or before January 1, 2020, doesn't have any assets, isn't engaged in any business or financial activities, and meets certain other requirements.[19]

Beneficial owners

Under the Corporate Transparency Act, a reporting company must report information about its beneficial owners.[20] A beneficial owner is an individual who (directly or indirectly) exercises substantial control over the reporting company or an individual who owns or controls 25 percent or more of the reporting company's ownership interests.[21]

There are some exceptions. A minor is not a beneficial owner of a reporting company if, instead of providing information about the minor, the company provides information about the minor's parent or guardian.[22] A company's agent, nominee, employee or creditor generally is not a beneficial owner.[23] Similarly, an individual who might inherit an interest in the company generally is not a beneficial owner.[24]

Company applicants

Under the Corporate Transparency Act, a reporting company must also report information about its company applicants.[25] A company applicant is the individual who directly files the document that forms or registers the company or, if more than one individual is involved in the filing of the document, the individual who is primarily responsible for directing or controlling such filing.[26]

Beneficial ownership information reports

A reporting company must file an initial report, an updated report if there's a change affecting certain information previously reported, and a corrected report if there's incorrect information in a previously filed report.

[17] 31 CFR § 1010.380(c)(2)(xix)(A). A tax-exempt 501(c) organization is an organization described in Section 501(c) of the Internal Revenue Code and exempt from tax under Section 501(a) of the Internal Revenue Code.
[18] Id. A private foundation is an organization described in Section 501(c) of the Internal Revenue Code and classified as a private foundation under Section 509(a) of the Internal Revenue Code.
[19] 31 CFR § 1010.380(c)(2)(xxiii).
[20] 31 USC §§ 5336(b)(1) and (2)(A).
[21] 31 CFR § 1010.380(d).
[22] 31 CFR § 1010.380(d)(3)(i).
[23] 31 CFR §§ 1010.380(d)(3)(ii), (iii), and (v).
[24] 31 CFR § 1010.380(d)(3)(iv).
[25] 31 USC §§ 5336(b)(1) and (2)(A).
[26] 31 CFR §§ 1010.380(e).

Initial reports

A domestic reporting company created before 2024 must file its initial report on or before January 1, 2025.[27] A domestic reporting company created in 2024 must file its initial report within 90 calendar days after the earlier of (1) the date on which it receives notice that its creation has become effective or (2) the date on which a secretary of state or similar office provides public notice that the company has been created.[28]

A domestic reporting company created after 2024 must file its initial report within 30 calendar days after the earlier of (1) the date on which it receives notice that its creation has become effective or (2) the date on which a secretary of state or similar office provides public notice that the company has been created.[29] These deadlines also apply to foreign reporting companies, although they are based on when the company first registers to do business in the United States (rather than when it's created).[30]

Updated reports

A reporting company must file an updated report if there's a change in the previously reported information about its beneficial owners.[31] The updated report generally must be filed within 30 calendar days after the change.[32]

Certain transactions may trigger a filing obligation. A reporting company must file an updated report upon a gift, sale or other transfer of an ownership interest in a reporting company if the transfer results in a change of beneficial ownership. For example, a transfer of an ownership interest in a reporting company to a revocable trust may result in a change of beneficial ownership (e.g., as may happen when the transferor isn't the sole trustee). Similarly, a gift to an individual or an irrevocable trust may result in a change of beneficial ownership. These transfers thus may necessitate the filing of an updated report.

There are also changes in an individual's life that may trigger a filing obligation. For example, a reporting company must file an updated report when an individual's name or address changes or when an individual's name or address shown on a passport, driver's license or other identification changes if an image of the identification was previously reported to FinCEN.[33] A reporting company also must file an updated report when a minor child attains the age of majority if a reporting company previously reported information about the child's parent or legal guardian.[34] A reporting company must file an updated report after a beneficial owner dies, but the updated report generally must be filed within 30 calendar days after the deceased individual's estate is settled.[35]

Corrected reports

A reporting company must file a corrected report if a report contained information that was inaccurate at the time of filing.[36] The corrected report must be filed within 30 calendar days after it knows or should have known that the information was inaccurate.[37]

[27] 31 CFR § 1010.380(a)(1)(iii).
[28] 31 CFR § 1010.380(a)(1)(i)(A).
[29] 31 CFR § 1010.380(a)(1)(i)(B).
[30] 31 CFR §§ 1010.380(a)(1)(ii) and (iii).
[31] 31 CFR § 1010.380(a)(2)(i). A reporting company isn't required to file an updated report if there's a change solely with respect to the previously reported information about a company applicant who isn't a beneficial owner.
[32] Id.
[33] 31 CFR §§ 1010.380(a)(2)(i) and (v).
[34] 31 CFR § 1010.380(a)(2)(iv).
[35] 31 CFR § 1010.380(a)(2)(iii).
[36] 31 CFR § 1010.380(a)(3).
[37] Id.

Filing beneficial ownership information reports

A report generally must be filed electronically with the FinCEN using its BOI E-Filing System (boiefiling.fincen.gov).[38]

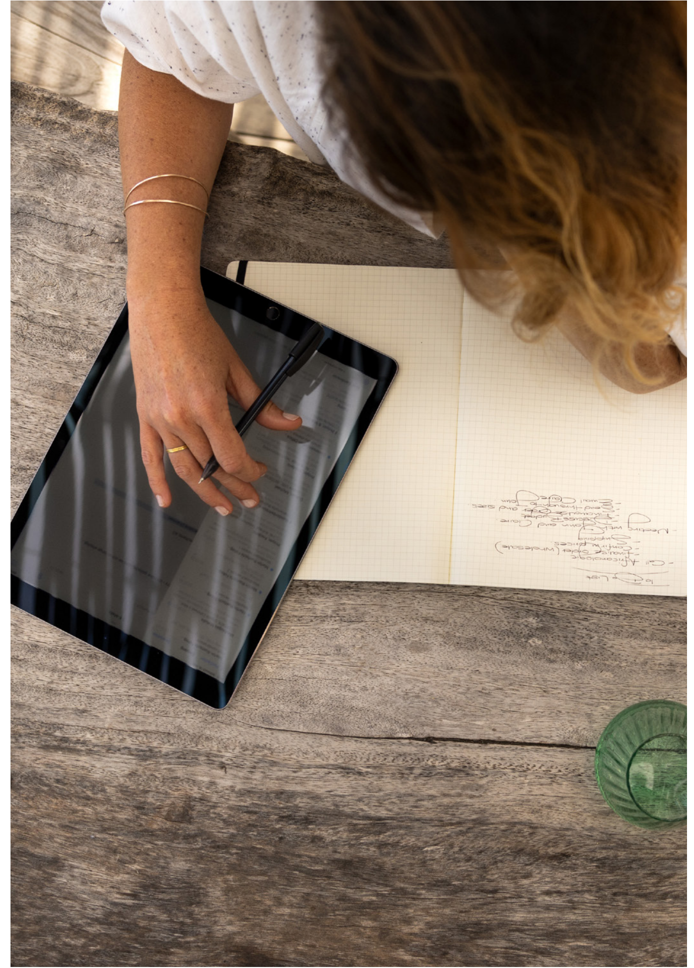
Conclusion

For purposes of ensuring compliance with the reporting obligations under the Corporate Transparency Act, a family office should consider developing policies and procedures for collecting and reporting the relevant information for itself and each other entity for which it has such compliance responsibilities. These might include procedures for spotting situations that may trigger a filing obligation, such as the formation of a new entity, a gift or other estate planning transaction where a reporting company is a part of the structure involving the transaction, and life events affecting family members. Births, adoptions, marriages, divorces, residency changes and deaths all have the potential to trigger a filing obligation.

Some family offices may choose to outsource certain compliance responsibilities to an accounting firm, law firm or other third party. Of course, this won't fully relieve a family office of the burdens of the reporting obligations. A family office will still need to coordinate with its service provider. Accordingly, its policies and procedures would likely be geared to collecting the relevant information, monitoring for changes and delivering the information to its service provider.

Additional reading

For additional information on the Corporate Transparency Act, see Todd D. Mayo, *Beneficial Ownership Reporting Requirements under the Corporate Transparency Act* (a publication of the UBS Advanced Planning Group), and Todd D. Mayo, *Some Common Questions about the Reporting Requirements under the Corporate Transparency Act* (a publication of the UBS Advanced Planning Group).



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[38] FinCEN, "Beneficial Ownership Information Reporting Frequently Asked Questions," January 12, 2024, *Q&A,* B.6.

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Beyond investments

Navigating the generational shift

A next-gen perspective on family business

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As a member of the next generation of my family business, I know just how challenging it can be to work with family. As the business grows, more people outside the family become intricately involved with the family and their enterprises.

The shift to the next generation not only affects the family members, but also the advisors and other executives involved in helping the family continue their success for generations to come. This transition carries some very important implications.

As the next generation assumes the reins, our journey involves not only personal growth and professional development, but also the delicate task of balancing tradition with innovation. In this article, I'll talk about the unique and complex family dynamics involved with shifting to the next generation, as well as shed some light on the perspective of non-family members and the intricate relationships they navigate with both the family and other non-family members.

For the next generation to embark on a path within a family business, a variety of challenges need to be confronted. While the next generation is hopefully deciding for themselves that they truly want to be involved in the family business, it is also the responsibility of the current or "now" generation to ensure that there is sufficient autonomy, agency and respect (which has to go both ways) for the next generation to be successful.

Unique and complex family dynamics are involved with shifting to the next generation.

The next generation is also establishing a distinct identity within the family legacy, addressing the expectations placed upon them, and often coming face-to-face with cognitive dissonance and confusion about the direction of the company. Making sure that the next generation respects, appreciates and understands all that the current or now generation has created enables them to feel more comfortable entering the business and hopefully being able to leave their mark on it.

The role of non-family members

Non-family members play a crucial role in the success of family businesses by bringing expertise and a fresh perspective. However, navigating the delicate balance between generations poses challenges. In many family businesses and offices, the non-family member can almost act as a go-between for the older and younger generations. This puts them in a very complicated position, where they have the challenge of not appearing to play favorites. They also oftentimes get stuck dealing with the family dynamics that always arise with family businesses and offices.

While having an objective third party is crucial, it's important to specifically lay out if that is the role the non-family member should take on. In my opinion, a solution to this is communication on all fronts. From the family perspective, it's important that the generations are open and honest with each other, and it's important that the non-family member is just as open and honest with the family. This is ideally a long-term relationship and at the end of the day, everyone just wants to be heard and feel that they have someone looking out for them. The objectivity of the non-family member allows for this, as long as that person doesn't get too frustrated with all of the other nuances within the enterprise.

Creating open dialog

When non-family members find themselves in the challenging position of acting as mediators between the next generation and their older counterparts, communication is the most important first step to making these difficult conversations easier. In addition, non-family members can work to establish open dialog between themselves and the family members. In doing so, it's incredibly important to consider the next generation's perspective in all of this, so they are part of the open dialogue that's being created. This means that both the now generation and the next generation have to be willing to recognize the importance of multiple perspectives and diverse ways of thinking. Doing things the same way they've always been done can be very successful, but it's worth noting that change is inevitable and that just because things change doesn't mean they'll fail.

> Both the now and the next generations have to be willing to recognize the importance of diverse ways of thinking.

The more the now generation can embrace change and a different way of doing things, the easier the transition will be.* In addition, it's important for the non-family member to try to help build bridges between generations. Using things like shared hobbies, talking about family history or even just talking about things other than the business can get both generations to put their guard down and have more relaxed conversations.

> Finding a way for collaborative communication between the next and now generations is key.

Whether you are a member of the family or an outside advisor, working with families is difficult, and the interplay between generations within a family business is a dynamic and evolving process. Successful navigation of this complex landscape involves fostering open communication and open dialogue, embracing change and recognizing the value of diverse perspectives. Finding a way for collaborative and productive communication between the next generation and the now generation is the key to the continued success, innovation and sustainability of family businesses and family offices alike.

Kyler Gilbert

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* Note: It's important to mention that embracing change and new opinions comes with a caveat. If the next generation is suggesting changing the business or strategy of the business in a way that is fundamentally impossible or has not been thought out financially, it is okay to go back to them and ask if they've thought it through and to show the now gen the work they did. As long as the change and diverse way of thinking is thought through, it is worth the now gen giving it some consideration.

Re-thinking the next-gen engagement strategy

Mark R. Tepsich
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A typical family office engagement with the next generation goes something like this: An executive starts a Zoom meeting with a handful of next-generation family members. After some light banter, the executive shares a PowerPoint on "investment diversification." After an hour of discussion, the meeting ends with an announcement of the next presentation on "private equity." While these kinds of meetings have their place, the next-generation engagement strategy could use some fresh thinking.

Many families recognize the importance of involving the next generation, yet lack an articulated strategy and often turn to the family office to engage the next generation. The senior generation may encourage the family office executive to help the next generation with financial education and increased involvement, preparing them for decision-making and taking on greater responsibilities. Members of the next generation may be seeking insight into the family enterprise. Whatever the motivation, the task of engaging the next generation often falls to the family office.

Let's look at ways to build a better family office engagement strategy, assuming the next generation is permitted to have full transparency into the family enterprise.

Laying the foundation

Our publication, *Family Matters: The Family Focused Family Office*, discusses various goals and outcomes that a family office could facilitate to help the family advance: enhanced communication, strengthening family connection, driving financial literacy, fostering family development, optimizing family governance, as well as promoting family values. These also are key to helping the next generation effectively navigate the family enterprise—the complex world that they will eventually help steward.

> The task of engaging the next generation often falls to the family office.

Preparing the next generation entails helping them understand the family enterprise's technical aspects such as financial, investment, tax and legal considerations across their business, investment portfolio, family office and philanthropic initiatives. It also involves helping them understand how the family culture and values apply to the family enterprise.

Challenges and opportunities

For the family office

There are several challenges for the family office in building a better next-generation engagement model. First is making the strategy relevant and compelling to the next generation. There also needs to be a personal connection between the executive and next generation, and the next generation needs to fully buy into being engaged. Also, family office executives are primarily hired for their technical acumen and not necessarily their ability to build a strategy, which can make for a challenging mandate. Further, designing and executing the strategy requires a robust time commitment. Also, additional capital may be needed to cover travel, third-party consultants and additional staff.

Developing an engagement strategy also offers opportunities. There is the chance to build rapport among family members through the engagement. Because family members often have a scant notion of family office operations, an engagement strategy can be an opportunity to inform the family more broadly. Engaging the next generation on a more personal level should also enable the executive to better serve the family.

> The next generation may not even know where to begin to ask questions about the family enterprise.

For the next generation

Since the family enterprise can often be a mystery, the next generation may not even know where to begin to ask questions about it. The next generation could also discover opportunities that they did not know existed prior to the engagement. Further, it could help create stronger connections among some family members.

For the senior generation

For the senior generation, it can be difficult to find the necessary time to engage, particularly if they are active in an operating business. Yet it can be an opportunity to strengthen connections across the generations, as well as inform the family of its history—often an afterthought for the family members who have lived it.

Build and design process

The design process is crucial in creating a successful engagement model. Common insights that successful engagement strategies share include:

- Leveraging the existing family enterprise
- Building the strategy collaboratively
- Offering both individual and joint engagements

As part of the design process, the family office should source opportunities for engagement. Studies have shown that providing choice and making the material personally relevant lead to enhanced intrinsic motivation, as well as enhanced learning performance.[1]

Before getting into the design process, let's look at the roles of both the family office and the senior generation in a next-generation engagement strategy.

[1] Cordova, D.I., & Lepper, M.R. (1996). "Intrinsic motivation and the process of learning: Beneficial effects of contextualization, personalization, and choice," *Journal of Educational Psychology*, 88(4), 715-730.

Family office role

The family office should play the role of a guided facilitator. Rather than being the cornerstone or only medium, the family office should:

- Help the next generation develop an overall engagement plan
- Source external parties
- Augment and enhance the overall strategy

In short, the family office should help create the conditions to make the strategy a success.

Senior generation role

The senior generation plays a role of active participation and endorsement. The senior generation should:

- Make themselves available when the next generation wants to engage
- Create opportunities in the family enterprise for the next generation

Leveraging the enterprise

Leveraging the family enterprise can make next-generation engagements contextual and relevant. It also helps ensure that the family culture as it is applied to the family enterprise is imparted.

Family members can be woven into the governance of the family enterprise. As a social environment, the family enterprise can provide an effective learning environment where people can share their knowledge and experiences in various settings. This dynamic of active participation versus passive engagement also promotes family connection and communication. Learning happens in real time and in context.

A collaborative process

Ideally, individual family members and the family office executive build and design an engagement strategy in a collaborative fashion. This ensures that the strategy takes into account the next generation's perspectives and interests. Even though some interests may not align with the family enterprise, using and building on them helps ensure that each engagement is meaningful to the next generation. Having the next-generation family members themselves build the engagement strategy helps them practice self-direction over their own development. This enhances the next generation's buy-in to the actual engagement plan, since they created it themselves.

Opportunities and choices

Involving members of the next generation doesn't mean giving them a blank slate. Indeed, providing options will be helpful in terms of concepts, topics and opportunities. While some family members will have specific topics they want to learn, others might only have a vague idea. Sharing a list of options can help facilitate ideas and spark conversation.

At the same time, it's important to remain open to topics that are interesting to the next generation. Too often, the family office may not deem these valuable. This is a mistake. The executive should consider input from the family member and build from there. Again, the family office's role is to create choice by supplying and surfacing options and opportunities, and then to provide the resources and conditions necessary to ensure a successful strategy.

Engagement opportunities

Engagement topics and opportunities range from investing, personal financial planning, the purpose of trusts and how they operate to tax-related concepts. Additional topics are often governance-related; for example, introducing the various family governance bodies such as the investment committee, foundation board, family business board and family office council. This could include providing a better understanding of how the family makes strategic decisions. Other relevant topics that can often be overlooked include how current events impact the family enterprise, whether they are macroeconomic, geopolitical or regulatory.

Learning to manage a portfolio

Many next-generation family members often have minimal liquidity outside their trusts. This means that they can't use the capital apart from what it is distributed for from the trust. This dynamic can lead to lack of practice and experience managing money, whether that is spending or investing. An option would be to give each family member a distribution from the trust, so that they can then go build and manage their own portfolio in consultation with the family office executive or external investment advisor. This could also be done in conjunction with the investment policy statement (IPS) discussed below.

Understanding investment policy statements

The family office executive could help each family member understand the family's IPS. This would include not only reviewing and discussing any current IPS, but also discussing it with the investment committee, external investment advisors and family office staff. These discussions could include how the IPS applies to each of those parties, their perspective and role, as well as their authority and discretion. In addition, each family member could draft and build an IPS for their own individual investment portfolio, with the guidance of the family office executive or external investment advisors.

Starting a family investment club

Some families create an investing club, giving each participating family member a small pool of capital and meeting on a monthly basis to discuss investment ideas or the markets. Each individual family member shares what they invested in and why.

Creating a junior investment committee

The family could also allocate a portion of the overall investment portfolio to the next generation. The next generation could form an investment committee, build an investment policy statement, as well as leverage external advisors and family office staff in overseeing a small portion of the overall portfolio. This would give the next generation practice working together. Here the family is co-managing a commingled portfolio, whereas the investment club is based on individual portfolio discussions.

> Giving family members a trust distribution can allow them to gain experience managing their own portfolios.

Engaging third-party advisors

Facilitating an introduction to and engagements with external advisors such as an investment advisor, attorney or tax accountant that the family uses could also be beneficial. This would allow the next-generation family members to learn about how the family engages these third-party advisors. Ideally, each individual family member should have a chance to engage with their own advisor.

Building personal budget and forecasting

Another valuable way to engage the next generation is to help them build their own personal budget and forecasting tool. Going through the process of building a budget provides insights and allows next-generation family members to see how various decisions impact their forecast over time. As they revisit the tool on a regular basis, they see how budget components change and come to understand the factors affecting variances in the budget.

In preparing the family's personal financial statements, the family office can provide budget tracking, including cash flow, sources and uses of cash, as well as expense tracking to help further awareness.

Leveraging university-sponsored programs

The family office can source a variety of short university-sponsored programs on various topics. These range from family enterprise dynamics, investing, family office, philanthropy, as well as family business dynamics. The chance to meet others with similar interests and backgrounds is an added benefit of attending these programs.

> Mentorships allow the next generation to hear about the family enterprise and learn perspectives from senior family members other than their parents.

Creating mentorships

Helping to facilitate mentorship opportunities with senior family members is also an option. This could include defining the mentoring relationship and devising some goals and objectives. Such mentorships allow the next generation to hear about the family enterprise and learn perspectives from senior family members other than their parents.

Developing internships

The family office can develop a short internship program to give next-generation members a chance to learn across the family enterprise. This does not have to be a full-time or even in-person role, although in-person would provide a higher level of immersion. Internships can include the family business, investment portfolio, philanthropic vehicle or family office. Having a defined responsibility in some operating capacity would be beneficial. The internship opportunity should be defined, with goals and objectives, specific responsibilities and a timeline.

Identifying third-party board memberships

Finding a role with a non-family board would introduce next-generation family members to governance processes and how organizations make strategic decisions. This could be with a nonprofit organization the family has a strong interest in or with another family's business board. This would also provide exposure to others with similar yet different experiences.

Becoming a board observer

The role of a board observer can give next-generation family members insights into how other family members and professionals make decisions, whether the family business board, investment committee, foundation board or other similar governance body. As an observer, next-generation family members can attend meetings but not participate in voting or other decision-making. They gain an understanding of the thought process and factors that the board or committee consider and discuss. What they learn through this process is highly contextual and relevant to the family enterprise.

The role of a board observer should be limited in duration. Families often make the mistake of leaving the role of observer in perpetuity, which can frustrate next-generation family members in the role. While the observer role need not immediately lead to a board or committee role, it should not be the final destination. Having an onboarding process as well as clearly defined term will enable the next-generation family member to have a beneficial experience.

Managing philanthropic decisions

Families often have a private foundation, donor-advised fund or both. The family can earmark a specific dollar amount for individual next-generation family members to donate to a nonprofit each year. The next-generation family member could create a short report on why they chose the nonprofit and how it is going to put the donated capital to work.

The family could also create a committee or junior board primarily composed of next-generation family members. Again, a specific dollar amount could be allocated for them to donate each year, allowing them to gain experience making decisions together.

Planning family retreats

A family retreat can be an important forum for engaging the next generation. Many family offices already have a family retreat as their mandate. However, the distinction here is to:

- Curate an agenda with the family's insight and feedback
- Identify activities and sessions of the family retreat that the next generation could lead

Often, family retreats are designed by the family office in concert only with the senior generation. Including the next generation in designing the retreat would help foster more engagement as well as learning opportunities.

> The role of a board observer can give next-generation family members insights into decision-making.

Summary

This list of engagement opportunities and ideas demonstrate that the family office can and should have a robust engagement strategy. To be most successful, that strategy should:

- Leverage the family enterprise, investment committee and other key aspects of the family office
- Include the next generation in the process of devising the strategy, as appropriate
- Continue on an ongoing basis
- Be memorialized by the family and family office staff

This model offers the advantages of being more scalable and relevant to the family.

Operationalizing the engagement strategy

Building the engagement model takes time. This could mean making the strategy design discussion part of a family retreat, as well as having several virtual follow-up meetings to refine the strategy. Including senior generation family members in these discussions can give them a valuable perspective and better understanding of what is important to the next generation. It also demonstrates their buy-in and underscores the engagement's importance. The collaborative design process should help the senior generation create opportunities in the family enterprise for the next generation.

Once the engagement strategy has been designed, the most effective method of operationalizing it is to memorialize the plan through an annual development plan (ADP) to ensure buy-in and follow-through by all stakeholders.

> An annual development plan (ADP) can be the most effective way of operationalizing a next-generation engagement strategy.

Annual development plan

The ADP should be collaboratively drafted with each family member. It can include goals as well as a timeline of each engagement. The ADP could be a simple one-page document to make the engagement transparent, confirm buy-in and clarify ownership of each item. Incorporating a midyear check-in helps to re-energize and keep everyone aligned with the plan. The check-in can be a good time to gather and address feedback about what is working and what is not. Do not be afraid to tweak the plan and be flexible in its execution. The ADP creates expectations and helps to keep both the family and the family office staff accountable.

Annual evaluation

Each year, the family office should conduct a strategy evaluation. While real time feedback is beneficial, the strategy and each engagement is part of a broader overall picture. It should cover all aspects of the ADP, including advisors and programs in how they were delivered and whether they were valuable. The goal of the annual evaluation is to:

- Make each year's plan more relevant to the next generation as well as the family overall
- Help improve the overall engagement model design and delivery

Other considerations

Be flexible and consistent

To ensure that the engagement model remains relevant and continues to create buy-in and alignment across different family members, the model itself must be flexible. If a style or method for engaging a family member is not working, do not be afraid to understand why and then revise and adapt as needed. As with any family office initiative, consistency is also important. The engagement strategy needs to carry through periods of ebb and flow in the level of interest among family members. Take time to recalibrate the plan and seek to consistently improve.

Results and outcomes

Any results and outcomes of the engagements should be looked at over the long term. While progress can certainly occur during midyear check-ins and the annual evaluation, the engagement model success, like so many other things in multigenerational families, should be judged over the long term. Successful outcomes can include:

- Increased transparency into the family enterprise
- Greater technical knowledge
- More engagement with senior family members across the family enterprise
- Enhanced family communication and connection
- Better decisions through a more collaborative process

These initiatives should result in next-generation family members that are better equipped and more effective at navigating the family enterprise and the complex world in which they operate. They should also result in a family office that can better anticipate the needs of the family and help them make decisions, both individually and collectively.

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Operational excellence

The case for going serverless

Tania Neild
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Like most businesses, family offices have traditionally used a physical server to house their technology stack (i.e., applications, printers and databases) and files. Over the last decade or so, advances in cloud computing and Software as a Service (SaaS) have made it possible to take what was once on a stored physical server and put it on a cloud server. In a post-COVID world, we have noticed an acceleration of this trend.

Going serverless is now currently viewed as best practice for a host of reasons. At the top of the list is eliminating physical servers and all the maintenance they require: patching, upkeep, security, warranty and monitoring. There is also no need to replace devices every five to ten years, which businesses would have to do as a matter of necessity to maintain optimal performance.

The decision to go serverless is an important one. As with many technology operation decisions, family offices should conduct a careful evaluation before pulling the trigger.

If a family office does decide to make the switch, preparing to make the transition involves two main considerations: the office's files/data and technology stack.

Managing files and folders in a serverless environment

With remote work on the rise in a post-COVID world, being able to access files from anywhere is vital for a family office. While it is possible to access files on a physical server remotely using a Virtual Private Network (VPN), using a content management system (CMS) such as SharePoint, Laserfiche or Worldox provides more flexibility. In this context, the CMS is the "serverless" option, while the VPN represents the traditional option where content sits on a physical server. The VPN to physical server method can typically only be done on a laptop on which the IT department has configured access, while a CMS can be accessed from any desktop or mobile device.

> Going serverless is now currently viewed as best practice for a host of reasons.

Another benefit of using an online CMS is the additional organizational functionality. These platforms can enable users to tag files for quicker searching, as well as track version history, collaborate online in real time, share externally and create granular permissions. With the volumes of documents that family offices handle every day, this feature makes a serverless environment an attractive option.

A CMS also contains major security enhancements, which allow family offices to log access and see who has viewed, downloaded or edited a file. This detail (which was previously logged in the background) is now transparent to the user. In a traditional file browser environment, the technology team would not be able to easily spot a mistake or suspicious activity, while they can easily do so in a serverless space. With security being a core consideration of any family office technology stack, this is a great feature to have.

Managing a technology stack in a serverless environment

Moving from a physical server to a cloud-based one requires some careful consideration in terms of migration. It is not just about lifting what a family office has from the server to the cloud, but also about embracing the new applications that come along with it.

Accounting is a great example. Rather than just moving the in-house QuickBooks to a private hosted server ("lift and shift"), consider moving to QuickBooks online, Microsoft Business Central, Sage Intacct or NetSuite. Single Sign On (SSO) can also be added, providing one set of user credentials to access all software, from accounting to investment tools.

The benefits of going serverless

There are four main benefits to going serverless: better security, more resources, greater flexibility and overall cost savings.

Security

With the sophistication of cyber threats on the rise, even IT professionals can find it challenging to keep up. Family offices (and most of their infrastructure management providers) do not have the resources to stay abreast. Due to their size, family offices tend to lack the server volume, deeply trained technical team and focus that a bank or application service provider has in order to stay in front of these security issues. Moving to a serverless environment bolsters the overall security of the family office's content and applications.

Resources

In a cloud environment, a family office can leverage the resources of a much larger company. With Microsoft Azure, for example, the organization can benefit from Azure's SOC 2 compliant physical site security. Within an application like Addepar or Intacct, the family office can leverage their entire infrastructure team for backup, patches and business continuity. Often these application providers are using Azure or AWS servers under their own applications.

Flexibility

In some cloud-based server systems, the family office can throttle its computing resources up and down based on need. This flexibility provides a savings on long-term costs. Physical servers need more resources and require expensive purchases; physical servers needing fewer resources during certain times of day cannot be throttled down to save on costs. They must be built for peak performance periods. In a cloud-based server environment, the family office can throttle computing resources up or down—for example, from a virtual desktop for an intern to a SQL server that might have nightly loads, batch reports or large performance calculation intervals.

Distributed cost

In terms of costs, physical servers involve large, lump-sum costs for upkeep ($50K to $60K every few years to replace hardware), as well as high recurring costs (hundreds of dollars per server per month for MSP management). Cloud-based solutions, in contrast, are subscription-based: costs are spread out and predictable. While they are not always less expensive, the costs are more evenly spaced to meet the need. The family office can increase or decrease the resources on an ad hoc basis as business needs change and evolve.

> With cloud-based solutions, costs are spread out and predictable.

Conclusion

If a family office is looking to make the switch to serverless, there are five key considerations:

- Check that the family office's current MSP (Managed Service Provider) can work with the new paradigm. Are the family office's fees based on hours, licenses, servers, software or users?
- What does the family office use locally? Do they still need it, or is there a cloud-based alternative? For example, Adobe desktop with mapped drives to Advent APX or QuickBooks.
- Plan for each application to migrate in a phased approach. Also consider the following:
  - How does this change the family office's backups, uptime and business continuity?
  - What can be archived and not migrated?
  - How will the family office handle training?
  - How can the family office clean up security rights and roles?
- As a VPN would no longer be needed to access the family office's files or applications, consider the following:
  - How does this change the office's logins, remote access and desktop experience?
  - Single Sign On (SSO)
  - Password vault
  - Your desktops and home access with security
- Moving security from your servers and local network to your desktops

It is also important to note that there can still be reasons to keep a VPN, even if the family office makes the switch to serverless. These options should be evaluated carefully.

If a family office would like to explore making the transition, the best place to start is with their managed service provider (MSP) and take it from there. At the end of the day, eliminating the physical server is a business decision and should be approached with careful thought and consideration.

Tania Neild

Founder and CTO of InfoGrate, Inc., Tania provides technology and operations consulting services to family offices. She founded InfoGrate in 1996 to provide consulting services on complex issues, such as selecting, implementing and integrating general ledgers, performance management systems, cybersecurity and content collaboration tools. With a Ph.D. in computer engineering, she has worked in the FinTech space for over 30 years and with family offices for 20 years.

Human capital

The General Counsel

The missing link in family offices

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As family offices grow in complexity, some reach an inflection point where they consider hiring a general counsel (GC) for their legal needs. This determination is strategic and incredibly nuanced and should be made with careful consideration of several factors. What follows is a discussion of a GC's impact within a family office, from providing guidance on trust and estate issues to risk mitigation in direct investments and family governance. What becomes clear is the value of having a horizontal thinker who welds together the disparate functions of a family office.

A catalyst for alignment and informed decision-making

The role of the GC within family offices extends far beyond the conventional legal sphere to serve as a strategic linchpin that intertwines legal acumen, financial insights and governance expertise. As family offices grapple with an intricate web of investments, estate planning and overall wealth management, the GC emerges as a catalyst for informed decision-making and coordination.

> The role of the GC within family offices extends far beyond the conventional legal sphere to serve as a strategic linchpin.

Broadly speaking, family offices choose to invest in a GC because they need to manage increasing complexity. This complexity involves various interconnected aspects such as ownership, enterprise governance, family dynamics, wealth structures and taxes. Additionally, fiduciary responsibilities, family activities across jurisdictions, investment strategies and family ventures contribute to the intricate landscape. This does not begin to take into account human resources and other employment law issues. In short, a decision in one part of the enterprise often ripples through and affects other parts of the family enterprise. A GC helps ensure that the family office and the family enterprise are better aligned, which results in better outcomes.

A unique vantage point

The GC occupies a unique vantage point at the intersection of various family office initiatives. Unlike external counsel, the in-house GC comprehensively understands how decisions in one domain, be it investments or estate planning, reverberate throughout the family enterprise. This insight into the broader picture empowers the GC to facilitate informed decision-making across the family enterprise, a task that can be challenging for external counsel operating outside of the family office and often from a professionally narrower focus. The family office GC has the ability to think horizontally, linking together various facts and issues from across the family enterprise. Understanding the web of complexity is necessary to provide practical advice.

Specifically, the family office GC often touches upon and provides thoughtful analysis across various areas of the family enterprise, which includes estate planning, income tax advisory, due diligence on investments and human resources risk mitigation.

Estate planning

In the realm of estate planning and wealth transfer, the GC's role becomes pivotal. No one else can seamlessly interpret legal documents while intricately weaving in tax implications and fiduciary duty concepts. By comprehending the entire family balance sheet, the GC guides wealth transfer strategies that not only preserve financial assets but also align with family business governance—a testament to their multifaceted role.

> The GC has the ability to think horizontally, linking together various facts and issues from across the family enterprise.

Income tax advisory

In addition to estate planning and wealth transfer, income tax advisory is part of the natural GC domain. Families often have a number of structures, including trusts and partnerships, as well as the family members themselves as beneficiaries and trustees that create a nexus with several jurisdictions and subject the family to various state income tax regimes. All family offices must navigate this patchwork of state income tax regimes. Moreover, families frequently sell publicly traded or privately held equity stakes in various companies. Pre-sale counseling to minimize tax implications is another critical area where the GC can provide significant value.

Investment due diligence

The GC's value extends to the realm of investments, especially in direct investments in operating companies and start-ups. The GC's ability to discern the nuanced deal terms, identify risks and understand the tax implications ensures that investment decisions are made with a full appreciation of their attendant risks. The GC's role is integral when it comes to due diligence on any investment opportunity.

Family business

Many family businesses do not have in-house counsel, and the family office GC can act as a legal advisor to the family business on an as-needed basis. That said, formal agreements between either the GC or family office and the family business should govern these engagements. Family businesses typically encounter legal issues in the contractual, regulatory, financing and tax domains, to highlight a few.

Private foundations and philanthropic initiatives

Private foundations rely on robust governance structures overseen by the GC of the family office to ensure effective operation. This entails the GC facilitating regular board meetings and ensuring compliance with annual tax filing obligations. Moreover, the GC plays a crucial role in overseeing the various binding pledges and financial support provided to nonprofit organizations by family foundations. Their expertise in legal matters ensures meticulous oversight and compliance, safeguarding the foundation's mission and objectives. By collaborating closely with the foundation's board and stakeholders, the GC helps uphold the foundation's reputation and maximize its impact within the philanthropic community.

Human resources

Having professional staff in the family office and domestic staff working across various locations exposes the family and the family office to various employment law-related risks. The GC often spearheads the HR function for a family office to mitigate potential risks associated with managing employees through their life cycle.

Family enterprise governance

Family governance, an often-overlooked aspect for some families, receives a boost from the GC's process-oriented approach. From facilitating governance body meetings to incorporating effective processes, the GC plays a central role in designing and operationalizing governance mechanisms. This includes investment committees, family office councils and family business boards.

Advising on fiduciary duties

Counseling multigenerational families on their fiduciary duties becomes vital, since they often have several if not dozens or more trusts and have family members serving as trustees and in director positions. As families get larger, family relationships can naturally become more attenuated. This dynamic can heighten the risk to family trustees and directors. While the risk of fiduciary litigation can seem remote, it is often prudent to consult legal counsel to ensure actions are harmonized with family members' fiduciary duties.

Personal matters

UHNW families have a range of personal matters requiring some level of legal expertise. These matters can vary from helping family members navigate pre-marital agreements to assisting with divorce and separation agreements or purchasing a private residence in foreign jurisdictions. The family office GC can add value to all of these personal situations.

Beyond the legal function

While the GC provides value in the typical scenarios above, it is crucial to recognize that the GC's role surpasses traditional legal functions. As an integral executive team member, the GC collaborates with family principals, other family office staff and external third parties, such as accounting and law firms. This cross-functional collaboration is just one example of the value that a GC can provide, which is often not readily apparent. Much of the GC's value stems from reducing risk and better aligning the family enterprise.

Sourcing and managing external counsel

Hiring a family office GC does not eliminate the need for external legal counsel. It would be unwise to assume otherwise, given that the legal profession, much like the medical field, consists of specialists in specific areas. Different issues require the expertise of different attorneys.

The GC plays a crucial role in selecting appropriate external counsel. This involves engaging more cost-effective legal representation for routine matters and upgrading to specialized firms when necessary. The GC is tasked with sourcing suitable legal counsel, often across multiple states and jurisdictions, and ensuring the effectiveness and efficiency of external legal teams. The GC can enhance efficiency by providing the entire fact pattern to external counsel and reducing the time external counsel spends getting to the heart of the matter.

Cost considerations vs. added value

Despite benefits discussed, the crux of the matter often revolves around quantifying the investment made by hiring a GC. Family offices commonly begin by assessing their external legal spend to gauge potential savings that can be achieved by hiring an in-house attorney. While this approach is useful, it is often inadequate as numerous hidden factors aren't taken into consideration. For instance, invoices do not account for "hidden" tasks that should involve the guidance of legal counsel but are currently handled by non-attorneys within the family office. This situation poses significant risks that will not be apparent by reviewing law firm invoices. Family office personnel often handle tasks that fall within the purview of the GC. By reallocating their time, these staff members can refocus on their core competencies.

> Reallocating these tasks that fall within the purview of the general counsel can free family office staff to focus on their core competencies.

Conclusion

In a family office, the decision to enlist a GC arises from the need to navigate complexity. Serving as both a legal expert and strategic advisor, the GC harmonizes external expertise with internal dynamics, seamlessly blending legal, strategic and familial considerations. Their multifaceted role goes beyond traditional legal functions, extending to governance facilitation and risk mitigation. The ideal family office GC possesses a skill set that transcends legal expertise, encompassing horizontal thinking and a nuanced understanding of complex cross-disciplinary issues.

Ultimately, the GC becomes the linchpin, ensuring unity and strategic alignment within the family office. In fact, the family office GC is often viewed as a successor in waiting to the head of the family office, as the GC understands the web of complexity and can process the disparate issues necessary to help families make fully informed decisions.

The general counsel becomes the linchpin, ensuring unity and strategic alignment within the family office.

Eskor Edem

Eskor is a Director on the In-House Counsel Recruiting team at Major, Lindsey & Africa. He specializes in helping organizations recruit high-caliber attorneys across the financial services, real estate and nonprofit sectors. Leveraging his prior experience working in the General Counsel's office for a family office affiliated with a publicly traded real estate firm, he dedicates part of his practice to advising MFOs and SFOs.

In conversation

Lessons from an early stage venture investor

A Family Office Solutions podcast

Leora Zach, CFA
Client Solutions Specialist,
UBS Family Office Solutions

Jennifer Neundorfer
Founding Partner
January Ventures

Our Family Office Solutions podcast features a conversation with Jennifer Neundorfer, a founding partner at January Ventures, a venture capital firm that invests in pre-seed startups.

Jennifer is an operator turned investor who has been investing in early stage startups for the last decade. As a Cuban-American and one of the few Latina GPs in venture, Jennifer is committed to rewriting the networks in tech and venture capital.

Highlights of their conversation include:

- January Venture's focus on B2B software companies that are bringing legacy industries up the digital curve, investing in pre-seed as the first check into a company
- The benefits of family offices investing in a fund such as January Venture to build a sourcing engine that can later incorporate direct investments
- Important questions and considerations to help family offices evaluate prospective funds
- Why family offices should consider emerging managers and how they differ across asset classes
- Considerations for pitching to and raising capital from nonfamily member CIOs versus family members
- Why 2024 is a strong time to put fresh capital to work, both on the GP side and the LP side

Excerpt

Leora: As it relates to your strategy at January Ventures, can you describe your sourcing, diligence and decision-making process, and what makes a January deal?

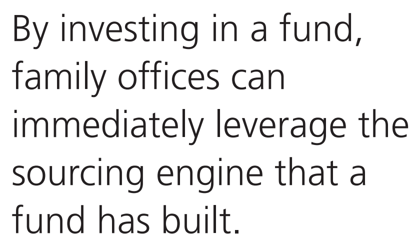
Jen: We're focused on B2B software companies that are bringing legacy industries up the digital curve, so we're primarily investing in industries like healthcare, climate and sustainability, supply chain, work and productivity. We invest at pre-seed, so we're investing as the first check into a company, and this is when a company is typically raising anywhere from $500k to $2.5m. We're investing in a founder who has an idea, they may have an early MVP, they are often pre-revenue, and sometimes it's just a founder, sometimes it's a cofounding team or maybe a founder plus a few team members, but it's very early.

> We're investing in a founder who has an idea.

Leora: As we think through various investment strategies at a family office, why should family offices invest in a fund like January Ventures versus doing it themselves and investing directly?

Jen: In venture, you need to spend the time to build the sourcing engine. By investing in a fund, family offices can immediately leverage the sourcing engine that a fund has built rather than building that up themselves. What we find is that a lot of family offices want to be more private, so they don't want to have their brand out there front and center. That's where investing in a fund can be effective.

That said, a lot of family offices do also invest directly into companies, and we've found that that works really well for family offices that have a specific industry expertise. They already have a bit of that sourcing engine, they have a network in the industry, they know how to evaluate companies. Family offices that have large teams and sophistication within venture tend to have a direct strategy as well and that strategy tends to perform because they have the expertise to execute on it. The third bucket are those family offices that have a real personal passion for what they are investing in. We've seen some family offices that feel strongly about a certain category want to put as much money to work there and aren't as focused on the returns of those investments, so they tend to go direct. Another nuance is, we've also seen many family offices, particularly newer family offices, start to build their venture portfolio by investing in funds and use that as a way to come up the venture curve, and then layer in direct investments as the family office grows and they mature and their venture expertise develops.



> By investing in a fund, family offices can immediately leverage the sourcing engine that a fund has built.

Leora: For families doing their own due diligence on funds, what questions should they ask of prospective funds as they evaluate and make decisions?

Jen: When you think about diligence, that translates into first, underwriting as the GPs. Who are the partners that you are investing in? Can their partnership endure? Why are they running this fund? This is a long-term commitment, and you need to have real confidence in the GPs that you're investing in.

The second is around strategy fit. How does a fund strategy fit with a family office's goals? Has that fund strategy remained consistent over time? Diligence and discipline are key pieces of what family offices need to underwrite in any fund investment.

The third piece is around track record, both the metrics of the fund but, in a market like this, it's really important to also understand the underlying portfolio metrics. In a market with a lot of paper mark-ups, understanding the health of the portfolio companies can provide in a bit more detail, particularly on emerging funds.

The last piece is the reputation that the fund has in the market. Talking to the co-investors for that fund, founder references, and other family offices and really understanding what their reputation is, what they do in an up market, what they do in a down market, and figuring out if those are the people you want to do business with.

Leora: Shifting a bit in conversation to defining what emerging managers are. Would you be able to explain what this means in the venture capital space, what are emerging managers?

Jen: Typically, we define emerging venture managers as funds 1 through 3, maybe 1 through 4 managing $100m or less. The reason that LPs gravitate toward emerging managers is that there is the belief that this is where the potential for greatest return lies. If you think about a manager who is on funds 1 through 3, those managers are really hungry to build their reputations and track records. I can speak from personal experience—Maren and I are out there hustling every day because we know that there's only going to be another fund if we can prove ourselves on this current fund. That hunger and alignment of incentives for an emerging manager is what makes a lot of LPs turn toward this asset class.

Leora: What do you wish family offices would know about emerging managers that could benefit family offices? How do family offices benefit emerging managers like you? What do you both get out of this relationship?

Jen: It's a great question. Given the size of an emerging manager's fund and the way that that is constructed, there's a lot of influence that family offices can have once they invest in emerging funds. Emerging managers have a lot of flexibility to help family offices meet their needs or lean into their areas of expertise. There are two ways that family offices can invest in a fund, and those have different benefits for the family office. The first is to anchor a fund. Family offices can come in and be a large early investor in an emerging fund manager. What that means is they can often dictate some of the terms. Some family offices in that situation will ask for an opportunity to sit on the LPAC, which is the governing body of the fund. They would actually be able to get influence and insight into the inner workings of the firm and have greater transparency than other investors.

Even if family offices don't come in as an anchor, there is still flexibility for emerging managers to help them meet their goals. What we've done with some of our family offices is actually involve them in diligence and sourcing based on their domain expertise. That was something that was important to those family offices, because we are a small, nimble team and can give them those opportunities. The second area is around direct investments. Many of our family offices that invest are coming into our fund so that they can get access to direct follow-on investments. When we've exhausted the pro-rata in our fund, we bring those investors in, and that's an opportunity that they really value and the economics on that are favorable for them. We have a third category of family offices, where the benefit for them is that they are getting a look at new technology. Some of our family offices, given their domain expertise of their principals or the businesses their principals are in, being invested in our fund helps them see new deal flow for prospective partners, prospective M&A, for prospective solutions in their businesses.

Leora: Super helpful. Thinking about capital raising and pitching to family offices, what is your experience with nonfamily member CIOs versus family members when it comes to raising capital and pitching to them?

Jen: I'll speak to this from our own experience because we have raised capital from both. What I've observed is that nonfamily member CIOs tend to be focused on either the opportunities that family members have specifically identified for them or the asset classes that they know and are comfortable with. In our experience, if an investment opportunity is outside of either of these areas, it can be hard to get serious attention, even if it is a compelling opportunity or investment area.

In contrast, we find that family members or the principal of the family office often have a lot more leeway to promote something they are excited about, be it a specific opportunity or an investment category.

Leora: What do you wish family offices would know as you raise capital from them?

Jen: If there are family offices that want to deploy into venture, we as managers need to know where to find them. There are two suggestions that I'll put out there. There are a lot of new events that are being formed with the express purpose of helping family offices connect with emerging managers. Those events are really important if there are family offices that want to deploy into venture. Otherwise, it can be very hard for venture managers in general but particularly emerging managers to find them.

The other piece is that emerging managers are hungry to deliver returns. Personally, I feel like I have something to prove, and that is a motivating factor in how I approach my day-to-day in building January. It's one of the reasons many family offices invest in January Ventures—they see that hunger, they recognize that from their own family and that's what they're excited to underwrite.

And the third thing is that emerging managers are excited to get to know family offices, and at a fund like January there is real flexibility to understand objectives beyond just top-tier returns and build a long-term relationship that's valuable on both sides.

Leora: It would be great if you can give your perspective on the outlook for 2024 and beyond. Perhaps you can share your thoughts about some of the things that you're seeing in the current scene.

Jen: It's certainly been a turbulent couple of years in the venture world. In 2024, we will still see some pains, particularly in companies that are in Series A and beyond. A lot of those companies have been propped up with extension rounds or insider follow-on rounds in the last 18 months. That extension capital won't be available in 2024 in the same way, so there will be a time where those companies will sink or swim. That said, I am more bullish than I was two years ago at the height of the market. Now

> I've seen a huge change in the caliber of founders starting companies.

is a really good time to put fresh capital to work, both on the GP side where I sit but also the LP side. One of the things I've noticed is that in the past 18 to 24 months, the venture tourists have "left the building," both on the founder and funder side. I've seen a huge change in the caliber of founders that we see for starting companies. They're doing it even though they know it's going to be hard, it may be difficult to raise capital and startup budgets are under scrutiny. They know they have a great idea and they're building it anyways. And the same dynamic exists on the GP side. We've seen valuations reset and discipline return to the market, which again is one of the reasons why I feel bullish about putting capital to work.

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Jennifer Neundorfer

Jennifer is the Managing Partner of January Ventures, a pre-seed fund investing in B2B software startups transforming legacy industries. She previously co-founded Flashstarts, an accelerator for startups outside Silicon Valley. As an operator, she launched media businesses at 21st Century Fox and YouTube. Jennifer believes in demystifying venture and is a mentor at TechStars and SomosVC. She has a B.A. from Harvard and an M.B.A. from Stanford.

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