1 under the Act to permit a registered closed-end investment company to make periodic distributions of long-term capital gains more frequently than permitted by section 19(b) or rule 19b–1.

APPLICANTS: Vertical Capital Income Fund (the ''Fund''), a diversified closed-end investment company registered under the Act and organized as a statutory trust under the laws of Delaware, and Oakline Advisors, LLC (''Oakline'') (together with the Fund, the ''Applicants''), registered under the Investment Advisers Act of 1940, organized as a limited liability company under the laws of Delaware, and serving as investment adviser to the Fund.[1]

FILING DATES: The application was filed on February 5, 2019, and amended on May 28, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 8, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: c/o JoAnn Strasser, Thompson Hine LLP, 41 S. High St., 17th Floor, Columbus, OH 43215, and Stanton Eigenbrodt, Executive Vice President, Chief Legal Officer, Chief Compliance Officer and Secretary, Oakline Advisors, LLC, 14675 Dallas Parkway, Suite 600, Dallas, TX 75254.

[1] Applicants request that the order also apply to each other registered closed-end investment company advised or to be advised in the future by Oakline or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with Oakline (including any successor in interest) (each such entity, including Oakline, an ''Adviser'') that in the future seeks to rely on the order (such investment companies, together with the Fund, are collectively the ''Funds'' and, individually, a ''Fund''). A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel at (202) 551–6915, or Kaitlin C. Bottock, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Summary of the Application

1. Section 19(b) of the Act generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once every twelve months. Rule 19b–1 under the Act limits to one the number of capital gain dividends, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986 (''Code,'' and such dividends, ''distributions''), that a registered investment company may make with respect to any one taxable year, plus a supplemental distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Applicants believe that investors in certain closed-end funds may prefer an investment vehicle that provides regular current income through a fixed distribution policy (''Distribution Policy''). Applicants propose that the Fund be permitted to adopt a Distribution Policy, pursuant to which the Fund would distribute periodically to its stockholders a fixed percentage of the market price of the Fund's common stock at a particular point in time or a fixed percentage of net asset value (''NAV'') at a particular time or a fixed amount per share of common stock, any of which may be adjusted from time to time.

3. Applicants request an order under section 6(c) of the Act granting an exemption from section 19(b) of the Act and rule 19b-1 to permit a Fund to distribute periodic capital gain dividends (as defined in section 852(b)(3)(C) of the Code) as frequently as twelve times in any one taxable year in respect of its common stock and as often as specified by, or determined in accordance with the terms of, any preferred stock issued by the Fund. Section 6(c) of the Act provides, in relevant part, that the Commission may exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants state that any order granting the requested relief will be subject to the terms and conditions stated in the application, which generally are designed to address the concerns underlying section 19(b) and rule 19b-1, including concerns about proper disclosures and shareholders' understanding of the source(s) of a Fund's distributions and concerns about improper sales practices. Among other things, such terms and conditions require that (1) the board of directors or trustees of the Fund (the ''Board'') review such information as is reasonably necessary to make an informed determination of whether to adopt the proposed Distribution Policy and that the Board periodically review the amount of the distributions in light of the investment experience of the Fund, and (2) that the Fund's shareholders receive appropriate disclosures concerning the distributions.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12779 Filed 6–17–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33508; File No. 812–14968]

Axonic Alternative Income Fund and Axonic Capital LLC

June 13, 2019.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the 1940 Act, pursuant to section 6(c) and 23(c) of the 1940 Act for an exemption from rule 23c–3 under the 1940 Act, and for an order pursuant to section 17(d) of, and rule 17d–1 under, the 1940 Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple

classes of shares of beneficial interest (''Shares'') and to impose asset-based service and/or distribution fees and early withdrawal charges.

APPLICANTS: Axonic Alternative Income Fund (the ''Initial Fund'') and Axonic Capital LLC (the ''Adviser'').

FILING DATES: The application was filed on October 24, 2018, and amended and restated on March 8, 2019, and June 11, 2019.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 8, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the 1940 Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants, c/o Jess Saypoff, Esq., Axonic Capital LLC, 390 Park Avenue, 15th Floor, New York, New York 10022, with copies to Douglas P. Dick, Esq. and Stephen T. Cohen, Esq., Dechert LLP, 1900 K Street NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Edward J. Rubenstein, Senior Special Counsel, at (202) 551–6854, or Nadya B. Roytblat, Assistant Director, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained by searching the Commission's website, at *http://www.sec.gov/search/search.htm,* using the application's file number or the applicant's name, or by calling the Commission at (202) 551–8090.

Applicants' Representations

1. The Initial Fund is a newly organized Delaware statutory trust that is registered under the 1940 Act as a closed-end management investment company and classified as a non-diversified investment company. The Initial Fund's investment objective is to seek total return.

2. The Adviser, a Delaware organized limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Initial Fund to offer investors multiple classes of Shares with varying sales loads and asset-based service and/or distribution fees and to impose early withdrawal charges.

4. Applicants request that the order also apply to any other registered closed-end management investment company that conducts a continuous offering of its shares, existing now or in the future, for which the Adviser, its successors,[1] or any entity controlling, controlled by, or under common control with the Adviser, or its successors, acts as investment adviser, and which provides periodic liquidity with respect to its Shares through tender offers conducted in compliance with either rule 23c–3 under the 1940 Act or rule 13e–4 under the Securities Exchange Act of 1934 (the ''1934 Act'') (each such closed-end management investment company a ''Future Fund'' and, together with the Initial Fund, each a ''Fund,'' and collectively the ''Funds'').[2]

5. The Initial Fund currently issues a single class of Shares (the ''Initial Class Shares''). The Initial Class Shares are currently being offered on a continuous basis pursuant to a registration statement under the Securities Act of 1933 at their net asset value per share. The Initial Fund, as a closed-end management investment company, does not continuously redeem Shares as does an open-end management investment company. Shares of the Initial Fund are not listed on any securities exchange and do not trade on an over-the-counter system. Applicants do not expect that any secondary market will ever develop for the Shares.

6. If the requested relief is granted, the Initial Fund intends to offer multiple classes of Shares, such as the Initial Class Shares and a new Share class (the ''New Class Shares''), or any other classes. Because of the different distribution fees, shareholder services fees, and any other class expenses that may be attributable to the different classes, the net income attributable to, and any dividends payable on, each class of Shares may differ from each other from time to time.

7. Applicants state that, from time to time, the Board of a Fund may create and offer additional classes of Shares, or may vary the characteristics described of the Initial Class and New Class Shares, including without limitation, in the following respects: (1) The amount of fees permitted by a distribution and service plan as to such class; (2) voting rights with respect to a distribution and service plan as to such class; (3) different class designations; (4) the impact of any class expenses directly attributable to a particular class of Shares allocated on a class basis as described in the application; (5) differences in any dividends and net asset values per Share resulting from differences in fees under a distribution and service plan or in class expenses; (6) any early withdrawal charge or other sales load structure; and (7) any exchange or conversion features, as permitted under the 1940 Act.

8. Applicants state that, in order to provide some liquidity to shareholders, the Initial Fund is structured as an ''interval fund'' and makes quarterly offers to repurchase between five percent and twenty-five percent of its outstanding Shares at net asset value, pursuant to rule 23c–3 under the 1940 Act, unless such offer is suspended or postponed in accordance with regulatory requirements. Any other investment company that intends to rely on the requested relief will provide periodic liquidity to shareholders in accordance with either rule 23c–3 under the 1940 Act or rule 13e–4 under the 1934 Act.

9. Applicants represent that any asset-based distribution and servicing fee of a Fund will comply with the provisions of Rule 2341 of the Rules of the Financial Industry Regulatory Authority (''FINRA Rule 2341'').[3] Applicants also represent that each Fund will disclose in its prospectus the fees, expenses, and other characteristics of each class of Shares offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N–1A. As if it were an open-end management investment company, each Fund will disclose fund expenses borne by shareholders during the reporting period in shareholder reports,[4] and describe in its prospectus any arrangements that result in

[1] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] The Initial Fund and any Future Fund relying on the requested relief will do so in a manner consistent with the terms and conditions of the application. Applicants represent that any person presently intending to rely on the requested relief is listed as an applicant.

[3] Any references to FINRA Rule 2341 include any successor or replacement rule that may be adopted by FINRA.

[4] Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release).

breakpoints in, or elimination of, sales loads.[5] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge and private equity funds.[6]

10. Each Fund and its distributor (the ''Distributor'') will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end management investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements apply to the Fund and the Distributor. Each Fund or the Distributor will contractually require that any other distributor of the Fund's Shares comply with such requirements in connection with the distribution of Shares of the Fund.

11. All expenses incurred by a Fund will be allocated among its various classes of Shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution and service plan of that class (if any), shareholder services fees attributable to a particular class (including transfer agency fees, if any), and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of the Fund's Shares will be borne on a pro rata basis by each outstanding Share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the 1940 Act as if it were an open-end management investment company.

12. Applicants state that the Initial Fund does not intend to offer any exchange privilege or conversion feature, but any such privilege or feature introduced in the future by a Fund will comply with rule 11a–1, rule 11a–3, and rule 18f–3 as if the Fund were an open-end management investment company.

13. Applicants state that the Initial Fund does not currently impose, nor does it currently intend to impose, an early withdrawal charge. In the future, however, a Fund may impose an early withdrawal charge on shares submitted for repurchase that have been held less than a specified period. Each Fund may waive the early withdrawal charges on repurchases for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the early withdrawal charge (and any waivers or scheduled variations of the early withdrawal charge) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the 1940 Act as if the Fund were an open-end management investment company.

14. The Initial Fund, operating as an interval fund pursuant to rule 23c–3 under the 1940 Act, does not presently intend to, but a Fund (including the Initial Fund in the future) may, offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their Shares of the Fund for shares of the same class of (i) registered open-end management investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the 1940 Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, the ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the repurchase offer amount for such Fund as specified in rule 23c–3 under the 1940 Act. Any exchange option will comply with rule 11a–3 under the 1940 Act, as if the Fund were an open-end management investment company subject to rule 11a–3. In complying with rule 11a–3 under the 1940 Act, each Fund will treat an early withdrawal charge as if it were a contingent deferred sales load (a ''CDSL'').[7]

15. Applicants state that the Initial Fund does not currently, nor does it currently intend to, impose a repurchase fee, but may do so in the future.[8] If a Fund charges a repurchase fee, Shares of the Fund will be subject to a repurchase fee at a rate of no greater than two percent of the shareholder's repurchase proceeds if the interval between the date of purchase of the Shares and the valuation date with respect to the repurchase of those Shares is less than one year. Repurchase fees, if charged, will equally apply to all classes of Shares of the Fund, consistent with section 18 of the 1940 Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate a repurchase fee, it will do so consistently with the requirements of rule 22d–1 under the 1940 Act as if the repurchase fee were a CDSL and as if the Fund were a registered open-end management investment company. In addition, the Fund's waiver of, scheduled variation in, or elimination of the repurchase fee will apply uniformly to all shareholders of the Fund regardless of class.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2)(A) and (B) makes it unlawful for a registered closed-end management investment company to issue a senior security that is a stock unless (a) immediately after such issuance it will have an asset coverage of at least 200% and (b) provision is made to prohibit the declaration of any distribution upon its common stock, or the purchase of any such common stock, unless in every such case such senior security has at the time of the declaration of any such distribution, or at the time of any such purchase, an asset coverage of at least 200% after deducting the amount of such distribution or purchase price, as the case may be. Applicants state that the creation of multiple classes of Shares of the Funds may violate section 18(a)(2) because the Funds may not meet section 18(a)(2)'s requirements with respect to a class of Shares that may be a senior security.

2. Section 18(c) of the 1940 Act provides, in relevant part, that a registered closed-end management investment company may not issue or sell any senior security which is a stock if immediately thereafter the company will have outstanding more than one class of senior security that is a stock. Applicants state that the creation of multiple classes of Shares of a Fund may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the 1940 Act generally provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting

[5] Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release).

[6] Fund of Funds Investments, Investment Company Act Release Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See also* rules 12d1–1, *et seq.* of the 1940 Act.

[7] A CDSL, assessed by an open-end fund pursuant to Rule 6c–10 under the 1940 Act, is a distribution-related charge payable to the distributor. Pursuant to the requested order, the early withdrawal charge will likewise be a distribution-related charge payable to the distributor as distinguished from a repurchase fee which is payable to a Fund.

[8] Unlike a distribution-related charge, the repurchase fee is payable to the Fund to compensate long-term shareholders for the expenses related to shorter-term investors, in light of the Fund's generally longer-term investment horizons and investment operations.

multiple classes of Shares of a Fund may violate section 18(i) of the 1940 Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the 1940 Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the 1940 Act, or from any rule or regulation under the 1940 Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c), and 18(i) to permit the Funds to issue multiple classes of Shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit each Fund to facilitate the distribution of its Shares and provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end management investment company multiple class structure does not raise the concerns underlying section 18 of the 1940 Act to any greater degree than open-end management investment companies' multiple class structures that are permitted by rule 18f–3 under the 1940 Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end management investment company.

Early Withdrawal Charges

1. Section 23(c) of the 1940 Act provides, in relevant part, that no registered closed-end management investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the 1940 Act permits an interval fund to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the 1940 Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) of the 1940 Act provides that the Commission may issue an order that would permit a closed-end management investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for each Fund to impose early withdrawal charges on shares of the Fund submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the early withdrawal charges they intend to impose are functionally similar to CDSLs imposed by open-end management investment companies under rule 6c–10 under the 1940 Act. Rule 6c–10 permits open-end management investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor. Applicants state that these same policy considerations support imposition of early withdrawal charges in the interval fund context, and are a solid basis for the Commission to grant exemptive relief to permit interval funds to impose early withdrawal charges. In addition, applicants state that early withdrawal charges may be necessary for the Fund's Distributor to recover distribution costs from shareholders who exit their investments early. Applicants represent that any early withdrawal charge imposed by a Fund will comply with rule 6c–10 under the 1940 Act as if the rule were applicable to closed-end management investment companies. Each Fund will disclose early withdrawal charges in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Service and/or Distribution Fees

1. Section 17(d) of, and rule 17d–1 under, the 1940 Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the 1940 Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the 1940 Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end management investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the 1940 Act. Applicants request an order under section 17(d) of, and rule 17d–1 under, the 1940 Act, to the extent necessary, to permit each Fund to impose asset-based service and/or distribution fees (in a manner similar to rule 12b–1 fees for an open-end management investment company). Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules apply to closed-end management investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its Shares through asset-based service and/or distribution fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based service and/or distribution fees is consistent with the provisions, policies, and purposes of the 1940 Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the requested order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1 and, where

applicable, 11a–3 under the 1940 Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with FINRA Rule 2341, as amended from time to time, as if that rule applies to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–12883 Filed 6–17–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86095; File No. SR–NASDAQ–2019–049]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Amend the Definition of Family Member in Listing Rule 5605(a)(2) for Purposes of the Definition of Independent Director

June 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the definition of a ''Family Member'' for purposes of Listing Rule 5605(a)(2).

The text of the proposed rule change is set forth below. Proposed new language is italicized.

The Nasdaq Stock Market Rules

* * * * *

5605. Board of Directors and Committees

(a) Definitions

(1) No change.

(2) ''Independent Director'' means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. For purposes of this rule, ''Family Member'' means a person's spouse, parents, children,[and] siblings, [whether by blood, marriage or adoption, or anyone residing in] *mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares* such person's home. The following persons shall not be considered independent:

(A)–(G) No change.

* * * * *

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the definition of a ''Family Member'' for purposes of director independence under Listing Rule 5605(a)(2) to exclude stepchildren by reverting to the language of the rule before it was paraphrased. Currently, the rule provides that ''children . . . by marriage,'' or stepchildren, are considered Family Members. Nasdaq believes this category was added to the definition of a Family Member inadvertently and that such an expansion of the definition is unwarranted.

Rule 5605(a) provides a list of certain relationships that preclude a board from finding that a director is independent. These objective measures provide transparency to investors and companies, facilitate uniform application of the rules, and ease administration. Nasdaq's rules preclude a director from being considered independent if the director has a Family Member who (i) accepted any compensation from the Company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence (with certain exceptions);[3] (ii) is, a partner in, or a controlling Shareholder or an Executive Officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more (with certain exceptions);[4] (iii) is, employed as an Executive Officer of another entity where at any time during the past three years any of the Executive Officers of the Company served on the compensation committee of such other entity;[5] or (iv) is, a current partner of the Company's outside auditor, or was a partner or employee of the Company's outside auditor who worked on the Company's audit at any time during any of the past three years.[6] Nasdaq's rules also preclude a director from being considered independent if such director is a Family Member of an individual who is, or at any time during the past three years was, employed by the Company as an Executive Officer.[7]

Currently, for purposes of Nasdaq Rules, Family Member means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.[8] This definition includes stepchildren, as they are ''children by . . . marriage.''

When Nasdaq first adopted this rule in 1999, Family Member was defined as a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, and anyone who resides in such person's home.[9] The rule was subsequently amended to include sons-in-law and daughters-in-law in the definition of a Family Member.[10] At that point, the New York Stock Exchange's (''NYSE'') definition of an ''immediate family

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Listing Rule 5605(a)(2)(B).

[4] Listing Rule 5605(a)(2)(D).

[5] Listing *Rule* 5605(a)(2)(E).

[6] Listing Rule 5605(a)(2)(F).

[7] Listing Rule 5605(a)(2)(C).

[8] Listing Rule 5605(a)(2).

[9] *See* Securities Exchange Act Release No. 41982 (October 6, 1999), 64 FR 55510 (October 13, 1999).

[10] *See* Securities Exchange Act Release No. 42231 (December 14, 1999), 64 FR 71523 (December 21, 1999).