

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

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AMENDMENT NO. 4 TO APPLICATION FOR AN ORDER  
UNDER SECTION 202(a)(11)(H) OF THE  
INVESTMENT ADVISERS ACT OF 1940 (“ADVISERS ACT”)  
DECLARING THE APPLICANTS TO BE  
PERSONS NOT WITHIN THE INTENT OF THE ADVISERS ACT

WILLIAM E. SIMON & SONS, LLC  
NEW VERNON ADVISORS, INC.  
310 SOUTH STREET  
P.O. BOX 1913  
MORRISTOWN, NJ 07962-1913

All communications, notices, and orders to:

James E. Anderson, Esq.  
WilmerHale  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

This Application (including Exhibits) consists of 18 pages.

UNITED STATES OF AMERICA  
BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION

In the Matter of	)	
	)	
WILLIAM E. SIMON & SONS, LLC	)	AMENDMENT NO. 4 TO APPLICATION
NEW VERNON ADVISORS, INC.	)	FOR AN ORDER UNDER SECTION
310 SOUTH STREET	)	202(a)(11)(H) OF THE INVESTMENT
P.O. BOX 1913	)	ADVISERS ACT OF 1940 DECLARING
MORRISTOWN, NJ 07962-1913	)	THE APPLICANTS TO BE PERSONS
File No. 803-00214	)	NOT WITHIN THE INTENT OF THE
	)	ADVISERS ACT
	)	
	)	
	)	

William E. Simon & Sons, LLC (“WESS”) and New Vernon Advisors, Inc. (“NVA”) (together, the “Office”), hereby file this Amendment No. 4 to the application (“Application”) for an Order of the Securities and Exchange Commission (“Commission”) under Section 202(a)(11)(H) of the Investment Advisers Act of 1940 (“Advisers Act”) declaring to WESS and its affiliate under common control, NVA, to be persons not within the intent of the Advisers Act to the extent that each entity cannot satisfy all of the conditions to be a “family office” as defined in Rule 202(a)(11)(G)-1 (“Family Office Rule”) under the Advisers Act. For the reasons discussed below, the Office believes that the Order requested is fully consistent with the policies and purposes of the Advisers Act and the Family Office Rule.

I. BACKGROUND  
A. The Office

WESS, in concert with its affiliate under common control, NVA (together, “Office”), is a multi-generational single-family office which provides services to the family and descendants of William E. Simon.<sup>1</sup> The Office is located in Morristown, New Jersey, is wholly-owned by Family Clients, and is exclusively controlled (directly or indirectly) by one or more Family

<sup>1</sup> WESS provides the professional and administrative employees and other resources necessary to provide these services to members of the Simon Family (defined below). As of the date of this Application, NVA is the contractual counterparty to advisory agreements with individual members of the Simon Family. Future advisory agreements with members of the Simon Family or renewals of existing agreements may be executed between individual Simon Family members and WESS.

Members and/or Family Entities in compliance with the Family Office Rule.<sup>2</sup> For purposes of this Application, the term “Simon Family” will mean the lineal descendants of William E. Simon, their spouses, and all of the persons and entities that qualify as Family Clients.

The Office’s services include asset allocation advice, investment due diligence, investment management, recordkeeping assistance, custodial services, cash management, federal and state tax advice and preparation, financial accounting, bill payment, coordination of professional relationships with accountants, attorneys and unaffiliated discretionary wealth managers, management and administration of the various Simon Family investment entities, real estate management, management and administration of trusts for the Simon Family members, including providing trustees, as well as numerous other responsibilities (collectively, “Services”).

Any Service provided by the Office that relates to investment advice about securities or may otherwise be construed as advisory in nature is referred to in this Application as an “Advisory Service.”

Other than the provision of Services to a former sister-in-law of a lineal descendant as will be discussed in Section I.B. below, the Office complies with the three general conditions of the Family Office Rule for exclusion from the definition of “investment adviser” and regulation under the Advisers Act, including: (i) each of the persons served by the Office is a Family Client, *i.e.*, the Office has no investment advisory clients other than the Family Clients as required by paragraph (b)(1) of the Family Office Rule; (ii) the Office is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Office does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of this Application, Family Members account for approximately 89 percent of the natural persons to whom the Office provides Advisory Services.

#### B. Additional Family Client

The Office provides Services (including Advisory Services) to the sibling of a former spouse of William E. Simon’s lineal descendant<sup>3</sup> (“Former Sister-in-Law”) as well as a private foundation funded exclusively by this sibling (collectively, the “Additional Family Client”).<sup>4</sup> If the Former Sister-in-Law were a Family Client, the related foundation would meet the requirements of paragraph (d)(4)(v) of the Family Office Rule. The Office has been providing Advisory Services to the Additional Family Client for 26 years. The Additional Family Client does not have an ownership interest in the Office.

The assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client’s Family Entity) make up at least 75 percent of the total assets for which the Office provides Advisory Services.

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<sup>2</sup> Unless otherwise indicated, all capitalized words have the meaning ascribed to them in the Family Office Rule.

<sup>3</sup> The lineal descendant in question is William E. Simon’s daughter.

<sup>4</sup> The term “Additional Family Client” includes the sibling’s estate in the event of her death. As of the date of this Application, the lineal descendant’s divorce from her spouse has been finalized. However, the relationship between the sibling of the former spouse and the Office remains unchanged.

The Additional Family Client has important familial ties to and is an integral part of the Simon Family. She is invited to and welcome at every family gathering surrounding birthdays and appropriate religious and secular holidays, and attends those events that are convenient. She is considered by the other members of the Simon Family as if she was a natural sister or child of a natural sibling for purposes of all intra-familial affection, trust, and communications. In turn, she considers the other members of the Simon Family to be immediate family, with the attendant intra-familial affection, trust, and respect. Those members of the Simon Family who are involved in the day-to-day management of the assets of the Additional Family Client believe that they have the same kind of standard of care and loyalty to the Additional Family Client as they believe they owe to the other members of the Simon Family. Therefore, including the Additional Family Client into the definition of “family” for this purpose simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for more than two decades while the assets of the Additional Family Client were managed for her by the Simon Family.

## II. REQUEST FOR AN ORDER

Section 202(a)(11) of the Advisers Act defines the term “investment adviser” to mean “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. . . .”

The Office falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Office would be eligible but for the provision of Advisory Services to the Additional Family Client. Because the Office has regulatory assets under management of more than \$100 million, it is not prohibited from registering with the Commission under Section 203A(a) of the Advisers Act.

In sum, absent relief, the Office would be required to register under Section 203(a) of the Advisers Act, notwithstanding that (i) the Office does not hold itself out to the public as an investment adviser and does not market non-public offerings to persons or entities that are not Family Clients; (ii) the Office is wholly owned and controlled by members of the Simon Family, in accordance with paragraph (b)(2) of the Family Office Rule; and (iii) the Office is a “family office” for the Simon Family and will not offer its Advisory Services to anyone other than the Simon Family and the Additional Family Client. The Office requests that the Commission issue it an Order pursuant to Section 202(a)(11)(H) declaring it not to be a person within the intent of the Advisers Act.

## III. DISCUSSION

### A. Relationship with the Additional Family Client Does Not Change the Nature of the Office into that of a Commercial Advisory Firm

The proposing release for the Family Office Rule states that in defining the term “family member,” the Commission distinguished between offices that serve members of a single family

and those family-run offices that serve multiple families and are more commercial in nature.<sup>5</sup> However, the adopting release for the Family Office Rule clarified that the Advisers Act was not designed to “regulate the interactions of family members in the management of their own wealth” or apply to family offices that are “unlikely to involve commercial advisory activities.”<sup>6</sup>

The Office believes that its circumstances are consistent with the rationale for the Family Office Rule described in the Proposing and Adopting Releases. Here, the Office has for some time provided services to the sister of a former spouse of a lineal descendant of William E. Simon who does not fall within the definition of Family Member, but who is considered to be, and is treated as, a member of the Simon Family, and a related foundation. What began as high school friendships between the Additional Family Client, her sibling, and multiple members of the Simon Family grew to close family relationships that ultimately were memorialized in marriage. To this day, even after the marriage has ended, the Additional Family Client continues to be considered and treated as a member of the Simon Family. For example, these individuals continue to include each other in important family events, such as weddings, and to celebrate holidays and vacations together. If the family tree were otherwise, and this person was instead the sister of a lineal descendant of William E. Simon rather than the sister of a former spouse of a lineal descendant, there would be no question that each of the persons presently being served by the Office would be a Family Member, and that the related foundation would meet the requirements of paragraph (d)(4)(v) of the Family Office Rule pertaining to charitable foundations.

In requesting this Order, the Office is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, the number of natural persons that are not Family Members as a percentage of the total natural persons to whom the Office would provide Advisory Services if relief were granted would be only approximately 11%. Rather, from the perspective of the Simon Family, the Office seeks to continue providing Advisory Services exclusively to members of a single family. The Office believes that none of the concerns the Commission mentioned in the Proposing and Adopting Releases regarding an overly broad application of the Family Office Rule would materialize if the Office received the Order requested herein. The granting of the relief requested herein simply will enable the Office to continue providing Advisory Services to this limited universe of those the Simon Family considered to be family members – those to whom it has been providing Services for 26 years. Therefore, the Office is requesting that the Commission declare the Additional Family Client to be a member of the Simon Family (“Extended Simon Family”) for purposes of the Family Office Rule.

**B. There Is No Public Interest in Requiring the Office to Be Registered Under the Advisers Act**

The Office is a private organization that was formed to be the “family office” for the Simon Family. The Office’s clients are comprised solely of members of the Extended Simon Family. The Office does not have any public clients. Indeed, the Office’s Advisory Services are exclusively tailored to the needs of the Extended Simon Family. The presence of the Additional

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<sup>5</sup> *Family Offices*, Investment Advisers Act Rel. No. 3098 (Oct. 12, 2010) (“Proposing Release”).

<sup>6</sup> *Id.*; see also, *Family Offices*, Investment Advisers Act Rel. No. 3220 (June 22, 2011) (“Adopting Release”).

Family Client, who has been receiving Advisory Services from the Office for more than two decades, does not create any public interest that would require the Office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a “family office” that complies in all respects with the Family Office Rule.

#### IV. PRECEDENT

The Commission issued all of the existing “family office” orders before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>7</sup> and the adoption of the Family Office Rule.<sup>8</sup> The Commission did not, however, rescind those orders upon adoption of the Rule,<sup>9</sup> and the Office believes that those orders may provide guidance on matters that were not addressed by, do not contradict, and are consistent with the policies and goals of the Family Office Rule.<sup>10</sup> The Office believes that the following precedents are relevant for the reasons discussed below.

The Commission has issued an order with respect to the following applications where the family office included a member of the family that was similarly distant from a lineal ancestor comparable to the Additional Family Client. In the Matter of The Pitcairn Company, Investment Advisers Act Release No. 52 (Mar. 2, 1949) (corporation whose business consists of holding, investing, and reinvesting its funds for a family all of whom are the spouses, descendants, or spouses of descendants of three brothers); In the Matter of Parkland Management Company, L.L.C., Investment Advisers Act Release No. 2362 (Feb. 24, 2005) (company provided investment advisory services to the family, including the sister of a spouse of a lineal descendant of the common ancestor, the mother and two children of such sister, and foundations created by members of the family); and In the Matter of WLD Enterprises, Inc., Investment Advisers Act Release No. 2807 (Nov. 14, 2008) (company organized as a “family office” to provide a wide array of services, including some investment advisory services, to the family, including the spouse of the common ancestor, the brother of the common ancestor, the spouse and lineal descendants of such brother, the spouses of the lineal descendants of such brother, certain employees, and entities created by, or for the benefit of, the family).

The Office believes that each of these orders treats the applicants as a Family Office even though each provides advisory services to persons that are outside the definition of “Family Client” ultimately adopted in the Family Office Rule. The Office believes that these orders recognize unusual circumstances in which an entity provides advisory services to such persons

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<sup>7</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>8</sup> See, e.g., *WLD Enterprises, Inc.*, Investment Advisers Act Release Nos. 2804 (Oct. 17, 2008) [73 FR 63218 (Oct. 23, 2008)] (notice) and 2807 (Nov. 14, 2008) (order); *Parkland Management Company, L.L.C.*, Investment Advisers Act Release Nos. 2362 (Feb. 24, 2005) [70 FR 10155 (Mar. 2, 2005)] (notice) and 2369 (Mar. 22, 2005) (order); *Longview Management Group LLC*, Investment Advisers Act Release Nos. 2008 (Jan. 3, 2002) [67 FR 1251 (Jan. 9, 2002)] (notice) and 2013 (Feb. 7, 2002) (order).

<sup>9</sup> See the Adopting Release, at Section II. B.

<sup>10</sup> The Office notes that the Commission has stated that certain issues would be more appropriately addressed through an application seeking an exemptive order than through a rule of general applicability. See Adopting Release, at n. 34; see also Proposing Release at Section II (as a rule of general applicability, the definition of family office could not match the exact representations, conditions or terms contained in every exemptive order that had been issued because each of those orders necessarily varied to accommodate the particular circumstances of each applicant.)

while remaining focused on a single family's needs and the entity's operations have not become commercial in nature. Although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued to family offices, the Commission recognized in the Proposing Release that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. In proposing the Family Office Rule, the Commission stated with respect to the definition of who is considered a "family client" that "[w]e have not included every type of individual or entity that has been included in a prior exemptive order based on specific facts and circumstances," and noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition.<sup>11</sup> Two orders already have been granted in accordance with this guidance: In the Matter of Duncan Family Office, Investment Advisers Act Release No. 3882 (Jul. 29, 2014) (company provides investment advisory services to the family and the mother of a spouse of a lineal descendant); and In the Matter of Gruss & Co., Inc., Investment Advisers Act Release No. 3882 (Jul. 29, 2014) (company provides investment advisory services to the family and two sisters of a spouse of a lineal descendant and each sister's respective spouse and children). The Office believes that its unusual circumstances – providing Advisory Services to Family Clients and to an Additional Family Client who has been viewed and treated as a Family Client for the past 26 years – have not changed the nature of the Office's operations to that of a commercial advisory business and that an exemptive order is appropriate based on the Office's specific facts and circumstances.

## V. PROCEDURAL MATTERS

Pursuant to Rule 0-4(f) under the Advisers Act, the Office states that its address is indicated on the first page of this Application. The Office further states that all written or oral communications concerning this Application should be directed to:

James E. Anderson, Esq.  
WilmerHale  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
(202) 663-6190

All requirements for the execution and filing of this Application on behalf of the Office have been complied with and are in accordance with the Articles of Incorporation and By-Laws of the Office, and the undersigned officer of the Office is fully authorized to execute this Application. The Office has adopted the Resolutions attached as Exhibit A authorizing the filing of this Application. The Verifications required by Rule 0-4(d) under the Advisers Act are attached as Exhibit B, and the Proposed Notice of the proceeding initiated by the filing of this Application, required by Rule 0-4(g) under the Advisers Act, is attached as Exhibit C.

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<sup>11</sup> See Proposing Release at Section II.A.

## VI. REQUEST FOR ORDER OF EXEMPTION

For the foregoing reasons, the Office requests that the Commission issue an Order under Section 202(a)(11)(H) of the Advisers Act declaring it not to be a person within the intent of the Advisers Act, provided that the Office complies with the following conditions:

1. The Office will offer and provide Advisory Services only to Family Clients and to the Additional Family Client, who will generally be deemed to be, and be treated as if she and the related foundation were, a Family Client; provided, however, that the Additional Family Client will be deemed to be, and treated as if she were, a Family Member for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.
2. The Office will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) as defined in paragraph (d)(5) of the Family Office Rule.
3. At all times the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) will account for at least 75 percent of the assets for which the Office provides Advisory Services.
4. The Office will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application.

The Office submits that the Order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

The Office submits that, pursuant to the authority granted to the Office's officers, the undersigned, who has signed and filed this Amendment No. 4 to the Application on behalf of the Office, is fully authorized to do so.

Dated: December 10, 2014.

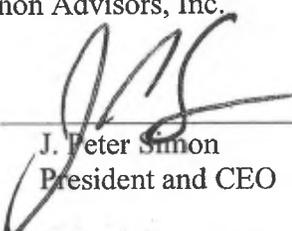
William E. Simon & Sons, LLC

By: William E. Simon, Jr.  
NAME: William E. Simon, Jr.  
TITLE: Executive Director and Co-Chairman

William E. Simon & Sons, LLC

By:   
NAME: J. Peter Simon  
TITLE: Executive Director and Co-Chairman

New Vernon Advisors, Inc.

By:   
NAME: J. Peter Simon  
TITLE: President and CEO

**EXHIBIT A**

**RESOLUTIONS OF WILLIAM E. SIMON & SONS, LLC**

The undersigned hereby certifies that she is Secretary of William E. Simon & Sons, LLC. ("WESS") and further certifies that the following resolutions were duly adopted by the Board of Directors of WESS on March 17, 2014, and are still in full force and effect.

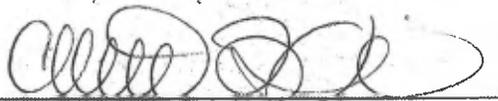
RESOLVED, that each of the undersigned does hereby waive all formal requirements, including the necessity of holding a formal or informal meeting, and any requirements that notice of such meeting be given.

RESOLVED, that the officers of WESS be, and each of them hereby is, authorized in the name and on behalf of WESS to execute and cause to be filed with the Securities and Exchange Commission an Application for Exemption from Section 202(a)(11)(H) of the Investment Advisers Act of 1940 thereunder, substantially in the form as attached hereto as Exhibit A, to the extent necessary to declare it to be a person not within the intent of the Advisers Act.

FURTHER RESOLVED, that the officers of WESS be, and each of them hereby is, authorized to execute and cause to be filed any and all amendments to such Application as the officers executing the same may approve as necessary or desirable, such approval to be conclusively evidenced by his, her, or their execution thereof.

FURTHER RESOLVED, that the officers of WESS be, and each of them hereby is, authorized to take such other action, including the preparation and publication of a notice relating to such Application for Exemption and the representation of WESS, in any matters relating to such Application or amendment thereof as they deem necessary or desirable.

IN WITNESS WHEREOF, I hereunto set my hand, this 10<sup>th</sup> day of December, 2014.



Name: Christine W. Jenkins  
Title: Secretary

**RESOLUTIONS OF NEW VERNON ADVISORS, INC.**

The undersigned hereby certifies that she is Secretary of New Vernon Advisors, Inc. ("NVA") and further certifies that the following resolutions were duly adopted by the Sole Director of NVA on March 17, 2014, and are still in full force and effect.

RESOLVED, that each of the undersigned does hereby waive all formal requirements, including the necessity of holding a formal or informal meeting, and any requirements that notice of such meeting be given.

RESOLVED, that the officers of NVA be, and each of them hereby is, authorized in the name and on behalf of NVA to execute and cause to be filed with the Securities and Exchange Commission an Application for Exemption from Section 202(a)(11)(H) of the Investment Advisers Act of 1940 thereunder, substantially in the form as attached hereto as Exhibit A, to the extent necessary to declare it to be a person not within the intent of the Advisers Act.

FURTHER RESOLVED, that the officers of NVA be, and each of them hereby is, authorized to execute and cause to be filed any and all amendments to such Application as the officers executing the same may approve as necessary or desirable, such approval to be conclusively evidenced by his, her, or their execution thereof.

FURTHER RESOLVED, that the officers of NVA be, and each of them hereby is, authorized to take such other action, including the preparation and publication of a notice relating to such Application for Exemption and the representation of NVA, in any matters relating to such Application or amendment thereof as they deem necessary or desirable.

IN WITNESS WHEREOF, I hereunto set my hand, this 10<sup>th</sup> day of December, 2014.



Name: Christine W. Jenkins  
Title: Secretary & Vice President





VERIFICATION

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF LOS ANGELES )

The undersigned being duly sworn, deposes and says that he has duly executed the attached Application ("Application") dated December \_\_, 2014, for and on behalf of William E. Simon & Sons, LLC ("WESS"), that he is the Executive Director and Co-Chairman of WESS, and that all actions by stockholders, directors, and other bodies necessary to authorize deponent to execute and file such Application have been taken. Deponent further says that he is familiar with the instrument and the contents thereof and that the facts set forth therein are true to the best of his knowledge, information, and belief.

William E. Simon & Sons, LLC

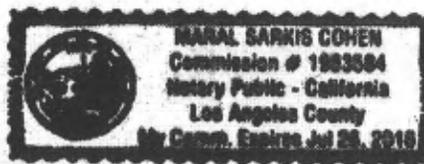
By: *William E. Simon*  
NAME: William E. Simon, Jr.  
TITLE: Executive Director and Co-Chairman

Subscribed and sworn to before me a Notary Public this 11<sup>th</sup> day of December, 2014.

Commission # 1983584  
Official Seal

*[Signature]*

My Commission expires July 26, 2016



**EXHIBIT C**

**PROPOSED FORM OF NOTICE**

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA-\_\_\_\_\_; File No. 803-00214]

William E. Simon & Sons, LLC  
New Vernon Advisors, Inc.

\_\_\_\_\_, 2014

Agency: Securities and Exchange Commission (“Commission”)

Action: Notice of Application for Exemption under the Investment Advisers Act of 1940 (“Advisers Act”).

Applicant: William E. Simon & Sons, LLC and New Vernon Advisors, Inc. (together, the “Office”).

Relevant Advisers Act Sections: Exemption requested under Section 202(a)(11)(H) of the Advisers Act from Section 202(a)(11) of the Advisers Act.

Summary of Application: The Office requests that the Commission issue an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act, which defines the term “investment adviser.”

Filing Dates: The application was filed on June 20, 2012; an amended application was filed on April 1, 2014, August 13, 2014, November 12, 2014, and December 16, 2014.

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 the Office with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on [\_\_\_\_], 2014, and should be accompanied by proof of service on the Office, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0-5 under the Advisers 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 may request notification of a hearing by writing to the Commission's Secretary.

Persons may request notification of a hearing by writing to the Commission’s Secretary.

Addresses: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549. The Office, William E. Simon & Sons, LLC and New Vernon Advisors, Inc., c/o James E. Anderson, WilmerHale, 1875 Pennsylvania Ave., N.W., Washington, D.C. 20006.

For Further Information Contact: Michael S. Didiuk, Senior Counsel, at (202) 551-6839 (Office of Chief Counsel, Division of Investment Management); or Holly L. Hunter-Ceci, Branch Chief, at (202) 551-6825 (Office of Chief Counsel, Division of Investment Management)

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 100 F Street, N.E., Washington DC 20549-0102 (telephone (202) 551-5850).

The Office's Representations:

1. The Office is a multi-generational single-family office that provides services to the family and descendants of William E. Simon. The Office is wholly-owned by Family Clients and is exclusively controlled (directly and indirectly) by one or more Family Members and/or Family Entities in compliance with Rule 202(a)(11)(G)-1 (the "Family Office Rule").<sup>12</sup> For purposes of the application, the term "Simon Family" means the lineal descendants of William E. Simon, their spouses, and all of the persons and entities that qualify as Family Clients as defined in paragraph (d)(4) of the Family Office Rule. Capitalized terms herein have the same meaning as defined in the Family Office Rule.
2. The Office provides both advisory and non-advisory services (collectively, "Services"). Any Service provided by the Office that relates to investment advice about securities or may otherwise be construed as advisory in nature is considered an "Advisory Service."
3. The Office represents that: (i) other than the exception discussed in representation 4 below, each of the persons served by the Office is a Family Client, *i.e.*, the Office has no investment advisory clients other than Family Clients as required by paragraph (b)(1) of the Family Office Rule; (ii) the Office is owned and controlled in a manner that complies in all respects with paragraph (b)(2) of the Family Office Rule; and (iii) the Office does not hold itself out to the public as an investment adviser as required by paragraph (b)(3) of the Family Office Rule. At the time of the application, the Office represents that Family Members account for approximately 89 percent of the natural persons to whom the Office provides Advisory Services.
4. The Office provides Services to the sibling of a former spouse of William E. Simon's lineal descendant ("Former Sister-in-Law") as well as a private foundation funded exclusively by this sibling (collectively, the "Additional Family Client"). The Office represents that if the Former Sister-in-Law were a Family Client, the related foundation would meet the requirements of (d)(4)(v) of the Family Office Rule.
5. The Additional Family Client does not have an ownership interest in the Office. The Office represents that the assets beneficially owned by Family Members and/or Family Entities (excluding the Additional Family Client's Family Entity) make up at least 75 percent of the total assets for which the Office provides Advisory Services.
6. The Office represents that the Additional Family Client has important familial ties to and is an integral part of the Simon Family. The Office maintains that including the Additional

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<sup>12</sup> 17 CFR 275.202(a)(11)(G)-1.

Family Client in the “family” simply recognizes and memorializes the familial ties and intra-familial relationships that already exist, and have existed for at least 26 years while the assets of the Additional Family Client were managed by the Simon Family.

The Office’s Legal Analysis:

1. Section 202(a)(11) of the Advisers Act defines the term “investment adviser” to mean “any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities. . . .”

2. The Office falls within the definition of an investment adviser under Section 202(a)(11). The Family Office Rule provides an exclusion from the definition of investment adviser for which the Office would be eligible but for the provision of Services to the Additional Family Client. Section 203(a) of the Advisers Act requires investment advisers to register with the SEC. Because the Office has regulatory assets under management of more than \$100 million, it is not prohibited from registering with Commission under Section 203(a) of the Advisers Act. Therefore, absent relief, the Office would be required to register under Section 203A(a) of the Advisers Act.

3. The Office submits that its relationship with the Additional Family Client does not change the nature of the office into that of a commercial advisory firm. In support of this argument, the Office notes that if the Former Sister-in-Law were the spouse of a lineal descendant, rather than the sibling of a former spouse of a lineal descendant, there would be no question that each of the persons presently being served by the office would be a Family Member, and that the related foundation would meet the requirements of paragraph (d)(4)(v) of the Family Office Rule pertaining to charitable foundations. The Office states that in requesting the order, the office is not attempting to expand its operations or engage in any level of commercial activity to which the Advisers Act is designed to apply. Indeed, although the Additional Family Client does not fall within the definition of Family Member, she is considered to be, and treated as, a member of the Simon Family and the number of natural persons who are not Family Members as a percentage of the total natural persons to whom the office would provide Advisory Services if relief were granted would be only approximately 11 percent. The Office maintains that, from the perspective of the Simon Family, the Office seeks to continue providing Advisory Services exclusively to members of a single family.

4. The Office also submits that there is no public interest in requiring the Office to be registered under the Advisers Act. The Office states that the office is a private organization that was formed to be the “family office” for the Simon Family, and that the office does not have any public clients. The Office maintains that the office’s Advisory Services are tailored exclusively to the needs of the Simon Family and the Additional Family Client. The Office argues that the presence of the Additional Family Client, who has been receiving Advisory Services from the office for 26 years, does not create any public interest that would require the office to be registered under the Advisers Act that is different in any manner than the considerations that apply to a “family office” that complies in all respects with the Family Office Rule.

5. The Office argues that, although the Family Office Rule largely codified the exemptive orders that the Commission had previously issued before the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Commission recognized in proposing the rule that the exact representations, conditions, or terms contained in every exemptive order could not be captured in a rule of general applicability. The Commission noted that family offices would remain free to seek a Commission exemptive order to advise an individual or entity that did not meet the proposed family client definition, and that certain situations may raise unique conflicts and issues that are more appropriately addressed through an exemptive order process where the Commission can consider the specific facts and circumstances, than through a rule of general applicability. The Office maintains that its unusual circumstances—providing Services to Family Clients and to an Additional Family Client for the past 26 years—have not changed the nature of the office’s operations into that of a commercial advisory business, and that an exemptive order is appropriate based on the Office’s specific facts and circumstances.

6. For the foregoing reasons, the Office requests an order declaring it to be a person not within the intent of Section 202(a)(11) of the Advisers Act. The Office submits that the order is necessary and appropriate, in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Advisers Act.

The Office’s Conditions:

1. The Office will offer and provide Advisory Services only to Family Clients and to the Additional Family Client, who will generally be deemed to be, and be treated as if she and the related foundation were, a Family Client; provided, however, that the Additional Family Client will be deemed to be, and treated as if she were, a Family Member for purposes of paragraph (b)(1) and for purposes of paragraph (d)(4)(vi) of the Family Office Rule.

2. The Office will at all times be wholly owned by Family Clients and exclusively controlled (directly or indirectly) by one or more Family Members and/or Family Entities (excluding the Additional Family Client’s Family Entity) as defined in paragraph (d)(5) of the Family Office Rule.

3. At all times the assets beneficially owned by Family Members and/ or Family Entities (excluding the Additional Family Client’s Family Entity) will account for at least 75 percent of the assets for which the Office provides Advisory Services.

4. The Office will comply with all the terms for exclusion from the definition of investment adviser under the Advisers Act set forth in the Family Office Rule except for the limited exception requested by this Application.

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

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Jill M. Peterson  
Assistant Secretary