

SECURITIES AND EXCHANGE COMMISSION**[Investment Company Act Release No. 29454; 812-13582]****Dolby Laboratories, Inc.; Notice of Application**

October 1, 2010.

AGENCY: Securities and Exchange Commission ("Commission").**ACTION:** Notice of application under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

Summary of Application: Dolby Laboratories, Inc. ("Dolby") seeks an order under section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Dolby, directly and through its wholly-owned subsidiaries, develops and delivers products and technologies that are used throughout the entertainment industry to produce a more immersive and enjoyable experience.

Filing Date: The application was filed on September 26, 2008, and amended on April 7, 2009, April 22, 2010, and September 30, 2010.

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 October 26, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, 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, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicant, 100 Potrero Avenue, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551-6870, or Jennifer L. Sawin, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file

number, or applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or calling (202) 551-8090.

Applicant's Representations:

1. Dolby, a Delaware corporation, directly and through its wholly-owned subsidiaries, develops and delivers innovative products and technologies that are used throughout the entertainment industry to produce a more immersive and enjoyable experience. Dolby generates revenue by licensing its technologies to manufacturers of consumer electronics products and software vendors and selling professional products and related services to entertainment content creators, producers and distributors. Dolby works across the global entertainment industry by offering products and services for content creators, such as studios and broadcasters, to encode content in Dolby's formats, by licensing Dolby technology to consumer electronics manufacturers and software vendors so that consumers can enjoy the content that has been encoded in Dolby's proprietary formats, and by working directly with standards bodies in an effort to have Dolby's formats adopted in their specifications to ensure a common standard across devices and to improve the overall consumer experience.

2. Dolby states that its business is highly capital intensive, highly cyclical and requires research and development of new technologies. As a result, Dolby represents that it maintains a substantial amount of cash, and various short-term investment securities, to run its operations, including research and development activities,¹ and to be available for strategic acquisitions. Dolby also states that it seeks to preserve capital and maintain liquidity by investing in short-term fixed income and money market investments that are investment grade, liquid, and that earn competitive market returns and provide a low level of credit risk in order to conserve capital and liquidity until the funds are used in Dolby's primary business or businesses ("Capital Preservation Investments"). Dolby states that it does not invest in securities for short-term speculative purposes.

3. Dolby also states that a significant portion of its assets consist of intangible assets, such as internally-generated intellectual property and other

intangibles that may not appear on its balance sheet. Dolby states that because it holds its internally-developed intangible assets through wholly-owned subsidiaries, the value of its investment securities is (and likely will remain) well below 40% of its total assets (excluding Government securities and cash items) on an unconsolidated basis. Dolby states, however, that valuation of internally-developed intangible assets is difficult and inherently subjective, and Dolby believes that it cannot rely on the fact that it does not meet the definition of investment company found in section 3(a)(1)(C) of the Act because third parties such as underwriters will not accept investment company status representations based on unconsolidated calculations that rely on Dolby's valuations of those assets. Because Dolby cannot rely on the fact that it does not meet the definition of investment company found in section 3(a)(1)(C) in circumstances requiring an unqualified opinion that Dolby is not an investment company under the Act, it seeks an order of the Commission pursuant to section 3(b)(2) of the Act.

Applicant's Legal Analysis:

1. Dolby seeks an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

2. Under section 3(a)(1)(C) of the Act, an issuer is an investment company if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40 percent of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines "investment securities" to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies, and (b) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act. Dolby states that as of June 25, 2010, the value of its total assets on an unconsolidated basis (exclusive of Government securities and cash items) was approximately \$7.5 billion, the value of Dolby's investment securities (as defined in section 3(a)(2) of the Act) on an unconsolidated basis was approximately \$0 and constituted approximately 0.0% of Dolby's total

¹ In fiscal years 2007, 2008 and 2009, Dolby's research and development expenses were \$44.1 million, \$62.1 million and \$66.7 million, respectively, and accounted for roughly 14.9%, 17.6% and 18.7% of Dolby's total expenses (including the cost of revenues), respectively.

assets (exclusive of Government securities and cash items).

3. Rule 3a-1 under the Act provides an exemption from the definition of investment company if no more than 45% of a company's total assets consist of, and not more than 45% of its net income over the last four quarters is derived from, securities other than Government securities, securities of majority-owned subsidiaries and primarily controlled companies. These percentages are determined on a consolidated basis with the company's wholly-owned subsidiaries. Dolby states that it currently relies on rule 3a-1 and limits its investment in Capital Preservation Investments, investing its liquid capital more heavily in Government securities and cash items to ensure that its investment securities remain within the limits of the asset component of rule 3a-1's 45% test. Dolby believes that limiting its Capital Preservation Investments to meet the constraints of rule 3a-1 greatly underutilizes Dolby's cash management potential to the detriment of Dolby and its shareholders.²

4. Section 3(b)(2) of the Act provides that, notwithstanding section 3(a)(1)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of businesses. Dolby requests an order under section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore not an investment company as defined in the Act.

5. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) The issuer's historical development; (b) its public representations of policy; (c) the activities of its officers and directors; (d) the nature of its present assets; and (e) the sources of its present income.³

a. Historical Development. Dolby states that since its founding in 1965, it

has been engaged in delivering products and technologies that are employed throughout the entertainment creation, distribution and playback process to enhance the entertainment experience. In recent years, Dolby has expanded its focus on developing and delivering new audio and video technologies that enhance the entertainment experience. Dolby's revenue comes almost exclusively from its licensing, sales and services of its technologies to manufacturers of consumer electronics products and software vendors.

b. Public Representations of Policy. Dolby states that it has never represented that it is involved in any business other than developing and delivering products and technologies for the entertainment creation, distribution and playback process. Dolby asserts that it has consistently stated in its annual reports, stockholder letters, prospectuses, filings with the Commission, press releases, marketing materials, and website that it is engaged in the business of developing and delivering products and technology that improve the entertainment experience. Dolby states that it generally does not make public representations regarding its investment securities except as required by its obligation to file periodic reports to comply with federal securities laws. Dolby further states that it has emphasized operating results and has never emphasized either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. Activities of Officers and Directors. Dolby states that its directors spend substantially all of their time as directors for Dolby overseeing Dolby's business of developing and delivering products and technologies for the entertainment creation, distribution and playback process. Dolby states that its executive officers spend substantially all of their time managing Dolby's business of developing and delivering innovative products and technologies that are used throughout the entertainment industry. Dolby's Chief Financial Officer spends less than 5% of his time monitoring Dolby's cash balances and managing short-term investment securities in accordance with Dolby's investment policies. None of Dolby's executive officers, other than the Chief Financial Officer, spend time monitoring cash balances and managing short-term investment securities.

As of September 25, 2009, Dolby had approximately 1,135 employees in locations throughout the world, consisting of 388 employees in sales and marketing, 421 employees in products

and technology (including 345 employees in research and development) and 326 employees in general and administrative functions. In addition to the Chief Financial Officer, only three employees spend a small portion of time on matters relating to the management of Dolby's investment securities: The Vice President, Tax and Treasury spends less than 10% of his time on investment matters. The Director of Treasury spends about one-third of her time on investment matters and the Treasury Manager spends approximately 20% of his time on investment matters.

d. Nature of Assets. Dolby states that as of June 25, 2010, the value of its investment securities (as defined in section 3(a)(2) of the Act) was approximately \$411 million, which constituted approximately 39.2% of its total assets on a consolidated basis (exclusive of Government securities and cash items) in accordance with rule 3a-1.⁴ Dolby states that its investments in "investment securities" that are not Capital Preservation Instruments will be no more than 10 percent of its total assets (other than Government securities and cash items) on a consolidated basis. Dolby further states that it owns, through its wholly-owned subsidiaries, a significant amount of intangible assets, including internally-developed intellectual property. Dolby states that notwithstanding the value of its internally-developed intellectual property to its business, that value is not recorded on Dolby's consolidated balance sheet as it is not treated as an asset under Generally Accepted Accounting Principles. Dolby also states that the asset tests used in connection with sections 3(a)(1)(C), 3(b)(1) and 3(b)(2) of the Act and rule 3a-1 under the Act thus significantly understate the relative value of Dolby's internally-developed intellectual property assets and significantly overstate the relative value of investment securities.

e. Sources of Income and Revenue. Dolby states that for the four fiscal quarters ended June 25, 2010, most of Dolby's net income before taxes was generated by its operating activities. At the end of the third quarter of fiscal 2010, Dolby had net income of \$405 million for the last four fiscal quarters combined, of which net investment income was \$8 million or 2% of income before taxes. Dolby states that the overwhelming majority of its income is

²Rule 3a-8 under the Act provides an exemption for certain companies whose research and development expenses are a substantial percentage of their total expenses. Dolby does not rely on rule 3a-8 because its research and development expenses have in recent years accounted for less than 20 percent of its total expenses (including the cost of revenues).

³ *Tonopah Mining Company of Nevada*, 26 SEC 426, 427 (1947).

⁴For purposes of determining its primary business, Dolby believes that consolidating its financial results with those of its wholly-owned subsidiaries presents a more accurate view of Dolby's business and financial position and a more reliable basis for evaluating its assets and income.

operating income generated by its licensing and products and services sales activities.

6. Dolby thus asserts that it satisfies the standards for an order under section 3(b)(2) of the Act.

Applicant's Conditions:

Dolby agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Dolby will continue to allocate and utilize its accumulated cash and investment securities for bona fide business purposes.

2. Dolby will refrain from investing or trading in securities for short-term speculative purposes.

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

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63021; File No. SR-C2-2010-004]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Certain Rule Language Contained in CBOE Rules

September 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 22, 2010, C2 Options Exchange, Incorporated ("Exchange" or "C2") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 adopt certain rules in place at the Chicago

Board Options Exchange, Incorporated ("CBOE"). The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at the Exchange's Office of the Secretary, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

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

In its filing with the Commission, C2 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 those 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 parts of such statements.

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

1. Purpose

In 2009, C2 was registered as a national securities exchange under Section 6 of the Exchange Act.⁵ C2 has yet to commence trading options, however a launch is anticipated in October 2010. The purpose of this filing is to modify certain C2 rules to match changes that have been made to corresponding CBOE rules, and to also adopt certain provisions from CBOE Rules 3.1 and 8.3 regarding trading permits and market maker appointments, respectively.

The Exchange proposes to amend Rule 1.1 to adopt the definitions of the terms "Professional" and "Voluntary Professional" in a substantially similar manner as they have recently been adopted for use on CBOE. Thus, C2 will allow users that fall into the customer range to elect to have orders treated, for purposes of certain C2 rules, as broker dealers. Further, when a person or entity that is not a broker-dealer places more than 390 orders per day on average during a calendar month for its own beneficial account(s), such person will be deemed a "Professional" under the Rules and will be treated in the same manner as a broker-dealer for purposes of certain designated C2 rules.

The Exchange proposes to amend Rule 3.1 to allow C2 to establish different types and terms of trading permits, and to establish guidelines and

standards governing the Exchange's authority regarding these trading permits. The proposed changes merely adopt certain language contained in CBOE Rule 3.1.

The Exchange also proposes to amend Interpretation .03 to Rule 3.5 to expand the ability of the Exchange to waive the requirement to conduct a hearing under Rule 3.5 if the Exchange intends to grant a Permit Holder's application to continue holding a Trading Permit or an associated person's application for continued association with a Permit Holder.

The Exchange also proposes to modify Rule 6.10 regarding order types to (i) make clear that the Exchange has the flexibility to make order types available on a class-by-class basis (this language is identical to language contained in CBOE Rule 6.53); (ii) add the Intermarket Sweep Order (identical to the CBOE version); add the AIM Sweep Order (identical to the CBOE version); add the Sweep and AIM Order (identical to the CBOE version); and add the C2-Only Order (identical to the CBOE version except it is called C2-Only instead of CBOE-Only).

The Exchange also proposes to amend Rule 6.32 regarding trading pauses to conform Rule 6.32 to comparable rules on CBOE and other exchanges.

The Exchange also proposes to amend Rule 8.2 to adopt language from CBOE Rule 8.3 (Appointment of Market-Makers) to provide a structure for C2 Market-Makers to register in option classes. As proposed, approved C2 Market-Makers will receive an option class registration credit of 1.0. Like on CBOE, a Market-Maker can use that credit to register in option classes (each class will have a designated registration cost). For now, C2 is designating every option traded on C2, except SPX, VIX, OEX, DJX, and XSP, to have a registration cost of .001 (with that cost structure, C2 Market-Makers should be able to register in every option class anticipated to be listed on C2, except for the specific classes listed above, with the registration credit of 1.0). If C2 determines to commence trading of SPX, VIX, OEX, DJX, and XSP options, it will file a proposed rule change to adopt registration costs for those products.

Lastly, the Exchange proposes to amend C2 Chapter 24 to clarify that CBOE Rule 24.20 (SPX Combination Orders) shall not apply to C2. CBOE Rule 24.20 relates to open-outcry trading of SPX combos on CBOE and is therefore not applicable to C2.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Exchange Act Release No. 61152 (Dec. 10, 2009), 74 FR 66699 (Dec. 16, 2009).