

Dolby Laboratories, Inc.  
Form 40-APP/A  
April 07, 2009

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UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

AMENDMENT NO. 1 TO APPLICATION FOR AN ORDER PURSUANT TO SECTION  
3(b)(2) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT DOLBY  
LABORATORIES, INC. IS PRIMARILY ENGAGED IN A BUSINESS OTHER THAN THAT  
OF INVESTING, REINVESTING, OWNING, HOLDING, OR TRADING IN SECURITIES

In the Matter of

DOLBY LABORATORIES, INC.

File No. 812- 13582

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This Application (including Exhibits)

consists of 45 pages.

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**APPLICATION FOR AN ORDER PURSUANT TO SECTION 3(b)(2) OF THE INVESTMENT COMPANY ACT OF 1940 DECLARING THAT DOLBY LABORATORIES, INC. IS PRIMARILY ENGAGED IN A BUSINESS OTHER THAN THAT OF INVESTING, REINVESTING, OWNING, HOLDING, OR TRADING IN SECURITIES.**

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**I. INTRODUCTION**

Dolby Laboratories, Inc. (the Applicant or Dolby), a Delaware corporation with its principal executive office in San Francisco, California, hereby applies for an order of the Securities and Exchange Commission (Commission) pursuant to section 3(b)(2) of the Investment Company Act of 1940, as amended (the Act) declaring that Dolby is 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,<sup>1</sup> develops and delivers innovative technologies, products, and services at each stage of the entertainment industry, including content creation, content distribution and content playback that serve to enhance the entertainment experience. Dolby licenses its technologies to manufacturers of consumer electronics products and media software vendors. Dolby designs, manufactures and sells

<sup>1</sup> With the exception of a limited number of real-estate holding subsidiary entities in which Dolby holds a minority interest, and in which Dolby's founder, Ray Dolby, holds the majority interest, all of Dolby's subsidiaries are wholly-owned by Dolby (or are wholly-owned by a wholly-owned subsidiary). As required by Generally Accepted Accounting Principles, all of Dolby's subsidiaries, including the real estate holding entities, are consolidated on Dolby's balance sheet. FASB Interpretation No. 46(R) requires consolidation of the real estate holding company subsidiary entities because of the related party status of Ray Dolby, who holds the majority interest in those entities, and Dolby, which holds a minority interest. Unless otherwise noted, references to Dolby and to the Applicant include all of these subsidiary entities.

professional products for the motion picture, broadcast and music industries. Dolby offers a variety of services to support the production of motion picture, broadcast, music and video game content. In this regard, Dolby's engineers work alongside filmmakers, television broadcasters, music producers and video game designers to help them use Dolby's products and technologies to create and reproduce the content they envision. Dolby is also heavily involved in research and development of new technologies.

Dolby does not hold itself out, and is not perceived, as an investment company. Nevertheless, because Dolby is a highly successful operating company with a substantial amount of cash on hand and a significant amount of internally-generated intellectual property, the composition of Dolby's assets at times brings it close to the definition of an investment company under the Investment Company Act of 1940 (the "Act"). In fact, if Dolby did not carefully manage its assets, it would likely be deemed to be an investment company, as defined under the Act. Notwithstanding its substantial cash reserves, given Dolby's highly visible and successful operating business, Dolby submits that it is the precise type of company that the Securities and Exchange Commission (the "Commission") should find to be primarily engaged in a business other than that of an investment company.

<sup>2</sup> For purposes of section 3 of the Act, section 2(a)(41) of the Act defines "value" to mean (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are available, the market value at the end of the last preceding fiscal quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost of the securities and other assets. For purposes of all determinations discussed in this Application, Dolby has valued all assets in accordance with section 2(a)(41) of the Act, except that Dolby's board of directors has delegated this function to Dolby's officers and employees. For additional discussion of this issue, please refer to Section IV.B.2.B of this Application, titled "Misleading Presentation of Financial Information."

## II. BACKGROUND

### A. The Company

#### 1. Overview.

Dolby is a publicly-traded Delaware corporation with its principal executive office in San Francisco, California. Its common stock trades under the symbol `DLB` on The New York Stock Exchange. Dolby develops and delivers products and technologies that improve the entertainment experience and has done so since its founding in 1965. Dolby technologies are standard in a wide range of entertainment platforms and are used in virtually all standard definition Digital Versatile Disc, or DVD, players and personal computer DVD playback software, increasingly in digital televisions, set top boxes, portable media devices and in a wide array of consumer electronic products such as gaming systems and audio/video receivers. Movie theatres and broadcasters around the world use Dolby's products. Dolby licenses its technologies to manufacturers in approximately 35 countries and sells its products and services in over 50 countries.

As of September 26, 2008, Dolby had 1,153 employees worldwide, consisting of 429 employees in sales and marketing, 439 employees in products and technology (including 285 employees in research and development) and 285 employees in general and administrative functions.

#### 2. Operating Structure.

Dolby also maintains a number of wholly-owned subsidiaries in various jurisdictions, some of which, in turn, maintain other wholly-owned subsidiaries of their own. Dolby's wholly-owned subsidiaries include Dolby Laboratories, Inc., a California corporation ( `DLI` ) that is Dolby's main operating entity; Dolby Laboratories Licensing Corporation ( `DLLC` ), a

subsidiary that holds the majority of Dolby's intellectual property; and Via Licensing Corporation (Via Licensing), a subsidiary that administers joint licensing programs, as discussed below.

3. Dolby's Business.

The following description of Dolby's business is taken from information that is publicly available in Dolby's Form 10-K filed with the Commission on November 21, 2008 and on Dolby's website, <http://www.dolby.com>.

Dolby is the global leader in technologies that are essential elements in the best entertainment experiences. Dolby delivers innovative technologies, products, and services at each stage of the entertainment industry, including content creation, content distribution, and content playback that serve to enhance the entertainment experience. The licensing team works with consumer electronics manufacturers and media software vendors to develop and incorporate Dolby's innovations that are designed to improve the entertainment experience. In fiscal 2006, 2007 and 2008, Dolby's licensing revenue represented 77%, 80% and 84% of Dolby's total revenue, respectively. The products and services teams focus on developing and delivering innovative products for the professional community, which includes filmmakers and exhibitors, television producers, music producers and video game designers, who use Dolby technologies to generate a more realistic and immersive entertainment experience. In fiscal 2006, 2007 and 2008, Dolby's product revenue represented 17%, 14% and 11% of Dolby's total revenue, respectively. Dolby also offers support services for the professional end-user's operation of Dolby technologies. In fiscal 2006, 2007 and 2008, Dolby's revenue from support services represented 6%, 6% and 5% of Dolby's total revenue, respectively.

(a) Dolby's Licensing Activities

Dolby has a substantial base of intellectual property assets, including patents, trademarks, copyrights and trade secrets. An example of Dolby proprietary technology is Dolby Digital, which is a digital audio coding format used to provide surround sound in theatres from 35 mm film, and in the home from DVDs, and digital terrestrial broadcast, cable and satellite systems. Dolby Digital enables the storage and transmission of up to five full range audio channels, plus a low frequency effects channel. Other Dolby proprietary technologies include: Dolby Digital Surround EX, Dolby Digital Plus, HE-AAC, Dolby TrueHD, Dolby E, Dolby Digital Live, Dolby Pro Logic II, Dolby Virtual Speaker, Dolby Headphone, Dolby Mobile, PC Entertainment Experience or PCEE, Dolby Digital Stereo Creator, Dolby Digital 5.1 Creator, Dolby Volume, Dolby Contrast, Dolby Vision, and analog signal processing technologies.

As of September 26, 2008, Dolby had approximately 1,500 individually issued patents and nearly 1,935 pending patent applications in nearly 45 jurisdictions throughout the world. Dolby's licensing of its technologies accounts for a large portion of its total revenues. Dolby licenses its technologies to manufacturers of consumer electronics products and media software vendors. The licensing arrangements typically entitle Dolby to receive a specified royalty for every product shipped by its licensees that incorporates Dolby technologies. Dolby also collects fees for administering joint licensing programs (informally known as patent pools) on behalf of third parties.

(i) *Two-Tier Licensing Model.*

Most of Dolby's licensing business consists of a two-tier licensing model whereby Dolby's technology algorithms, embodied in reference software and firmware code, are first provided under license to a semiconductor manufacturer, which incorporates the technologies in

semiconductor chips such as an integrated circuit ( IC ). Dolby 's licensed semiconductor manufacturers ( implementation licensees ) then sell their ICs to manufacturers of consumer electronics products, which also hold licenses to use Dolby 's technologies ( system licensees ). Dolby separately permits system licensees to make and sell end user consumer electronics products such as DVD players, DVD recorders, audio/video receivers, televisions, set top boxes, mobile devices, video game consoles, personal audio and video players, personal computers and in-car entertainment systems, that incorporate ICs purchased from Dolby 's implementation licensees.

The implementation licensees may use Dolby 's reference software and other licensed know how directly to build and sell core technologies such as ICs or software library modules. The implementation licensees pay Dolby a one time, upfront administrative fee per license. In exchange, the licensee receives a licensing package, which includes certain information useful to implement Dolby 's technologies into their chipsets. Once the licensee has built its chipset, it sends Dolby a sample for quality control evaluation. If Dolby approves the implementation design, the licensee is permitted to sell the chipset only to system licensees. Dolby does not receive any royalties from implementation licensees.

The system licensees pay Dolby an initial fee for the technologies. Dolby delivers to system licensees a licensing package that includes information useful in utilizing Dolby 's technologies in their products. Once a system licensee has built a prototype of a product that incorporates Dolby 's technologies, they send Dolby a sample for quality control evaluation. If Dolby approves the design, the licensee is permitted to buy implementations from any implementation licensee and to sell approved products to retailers, distributors and consumers. Unlike sales of ICs by implementation licensees, sales of consumer electronics products



incorporating Dolby's technologies by system licensees are royalty bearing, generally based upon the number of units shipped by the system licensees that incorporate Dolby's technologies. Dolby has licensing arrangements with approximately 500 electronics product manufacturers and software developer licensees with corporate headquarters located in approximately 35 countries, which typically entitle Dolby to receive a royalty for every product incorporating proprietary technologies shipped by licensees.

The amount of royalties Dolby collects from a system licensee on a particular product depends on a number of factors such as the number of Dolby technologies used in that product and the total production volume for all products containing Dolby technologies shipped by the system licensee.

(ii) *Integrated Licensing Model.*

In addition to licensing under the two-tier licensing model, Dolby also licenses technologies, as embodied in reference software code, to operating system vendors and media software vendors and certain other consumer electronics manufacturers that act as combined implementation and system licensees. These licensees incorporate Dolby's technologies in their software applications, such as personal computer software DVD players used in desktop or notebook computers, or in integrated circuits they manufacture themselves and then incorporate into their consumer electronics products. In these cases, the implementation and the system are the same. As with the two-tier licensing model, the dual licensee pays Dolby an initial administrative fee. In exchange, the licensee receives a licensing package, which includes information to incorporate Dolby's technologies into the licensee's software program or integrated circuits. Once the licensee has built its product, they send a sample for quality control evaluation. If Dolby approves the design, the licensee is permitted to sell the product to retailers,

distributors and consumers, subject to the payment of royalties to Dolby generally for each unit shipped.

(iii) *Licensing of Patent Pools.*

Through Dolby's wholly owned subsidiary, Via Licensing, Dolby administers joint patent licensing programs (patent pools) on behalf of third party patent owners. Some of the patent pools also include Dolby's patents. These patent pools allow product manufacturers streamlined access to certain essential patents to standardized technologies in the fields of audio coding, interactive television, digital radio and wireless technologies.

(b) Dolby's Products

Dolby designs, manufactures and sells audio products for the motion picture, broadcast and music industries. These audio products, which are distributed in over 50 countries, are used in content creation, distribution and playback to provide surround sound, improve sound quality and increase the efficiency of sound storage and distribution. The majority of Dolby's product sales are derived from sales of cinema products, which movie theatres use to process film soundtracks, and to a lesser extent, sales of broadcast products used to encode and distribute content to viewers. In recent years, Dolby has developed a digital cinema server which loads, stores, decrypts and decodes encrypted digital film files for presentation on digital projectors in theatres, as well a digital 3D product which provides 3D capabilities. Dolby also offers related digital cinema processors and media adapters to decode digital cinema soundtracks, and digital cinema accessories to interface Dolby's digital cinema servers with theaters' existing automation systems. Digital cinema is based on open standards, which unlike traditional cinema, do not include Dolby's proprietary audio formats.

(i) *Content Creators, Distributors and Broadcasters.*

Filmmakers, music producers, video game designers, broadcasters and DVD producers use Dolby's professional products to produce and distribute entertainment content incorporating Dolby technologies.

(ii) *Cinema Operators.*

In traditional cinema, operators use Dolby's professional audio products to play motion picture soundtracks that have been produced using Dolby's sound technologies. In emerging digital cinema, Dolby offers processors and media adapters for the delivery of surround sound with digital movies, digital cinema servers which store and play back film video released in 3D and other digital formats and product accessories to interface digital cinema systems with a theatre's existing automation systems.

(c) Dolby's Services

Dolby offers a variety of services to support the production of motion picture, broadcast, music and video game content. Dolby's engineers work alongside filmmakers, television broadcasters, music producers and video game designers to help them use Dolby's products and technologies to create and reproduce the content they envision. Dolby typically enters into service agreements with motion picture studios or filmmakers in connection with the production of a particular film to provide them with production services related to the preparation of a Dolby soundtrack, such as equipment calibration, mixing room alignment and equalization. Under these agreements, Dolby provides proprietary encoders to the studios for use during sound mixing, enabling them to create films with Dolby soundtracks using Dolby's proprietary technologies. Dolby also provides professional film mastering services to prepare movies for digital release. In addition, Dolby sometimes provides other services, for an additional charge,

such as print checking and theatre system calibration for important film screenings. Dolby's engineers also provide training, system design expertise and on-site technical expertise to cinema operators throughout the world to help them configure their theatres and equipment to ensure that movies are replayed with consistent high quality.

#### 4. Research and Development

Dolby is also heavily involved in research and development of new technologies. Historically, Dolby has focused its research and development primarily on audio signal processing technologies. In recent years, Dolby has expanded its research and development efforts into new audio and video areas. By focusing on creation, proof of feasibility and early stage prototyping of patentable new sound, image and related technologies, the research group serves as a source of new technologies for the engineering and technology development teams. The research group also helps identify, investigate and analyze new long-term opportunities, helps develop Dolby's technology strategy and provides support for internally developed and externally acquired technologies. In addition, Dolby's engineers and technology development teams are involved in the commercialization of technologies created by third parties that may be of interest to Dolby. As of September 26, 2008, approximately 285 of Dolby's 1,153 employees were involved in research and development. These employees spend approximately 90% of their time on research and development activities.

<sup>3</sup> In fiscal years 2006, 2007 and 2008, Dolby's research and development expenses were \$35.4 million, \$44.1 million and \$62.1 million, respectively, and accounted for roughly 19%, 20% and 21.7% of Dolby's total operating expenses and 13.5%, 14.9% and 17.6% of Dolby's total expenses (including the cost of revenues, which includes the cost of goods and services), respectively. We note that Rule 3a-8 under the Act provides relief similar to that herein requested to certain companies whose research and development expenses are a substantial percentage of its total expenses. In *Cooley Godward Kronish*, SEC No-Action Letter (July 12, 2007), the staff of the Commission interpreted the term "substantial" to require a company's research and development expenses to account for at least 20 percent of its total expenses. The Company does not rely on Rule 3a-8 because, as the expense numbers above indicate, its

**B. Dolby's Use of Capital Preservation Investments**

Dolby's business requires it to maintain a substantial cash position. There are a number of business reasons for this, including the capital intensive nature of the global entertainment industry, fluctuations in Dolby's annual and quarterly results, Dolby's need to maintain cash on hand for strategic acquisitions, and cash necessary to fund Dolby's research and development activities.

1. Capital Intensive Nature of Industry.

The global entertainment technology industry is a capital intensive industry, and, as a result, Dolby needs to maintain a substantial cash position that is available on short notice, regardless of its business cycle, for operations, capital expenditures, and other developments. For example, one of the key factors causing Dolby's business to be capital intensive is the importance of research and development to its ability to compete in the global entertainment technology industry and Dolby's need to fully staff its research and development functions with a highly-skilled workforce.

2. Fluctuation in Annual and Quarterly Results

In addition to being capital intensive, the global entertainment technology industry is highly cyclical due to the rapid pace of technological developments and changes in global and regional economic conditions. Dolby's business cycles result in quarterly and annual fluctuations in Dolby's revenue and operating results and require Dolby to maintain significant available cash. Some of the cyclical factors that affect Dolby's revenue stream include fluctuations in demand for Dolby's products and for the consumer electronic products of its licensees, as well as fluctuations in the timing of royalty payments received from licensees.

research and development expenses have in recent years accounted for less than 20 percent of its total expenses (including the cost of revenues, which includes the cost of goods and services).

Dolby develops and licenses technologies that are used by consumer electronics manufacturers in their products. The lifecycles of consumer electronics products can vary dramatically given changing consumer demand and rapidly evolving technologies. For example, in recent years, Dolby has benefited from the incorporation of its technologies in virtually all standard definition DVD players. However, as the markets for standard definition DVD players have matured, sales of standard definition DVD players have declined, and it is uncertain whether Dolby will realize a similar benefit from the inclusion of Dolby technologies in Blu-ray Disc players or other similar future consumer electronics product offerings.

In addition, Dolby's licensing revenues are driven by consumer purchases of consumer electronics products and personal computers incorporating Dolby technologies. Recent deteriorating macroeconomic conditions are creating uncertainty regarding consumer demand in the markets into which Dolby licenses its technologies, and the extent to which these conditions will persist and the overall impact they will have on consumer spending is not clear. Furthermore, Dolby's business is particularly exposed to adverse changes in general economic conditions, because products that incorporate Dolby technologies are entertainment-oriented and generally discretionary goods. Consequently, Dolby believes it is prudent to maintain enough liquidity in the form of cash and investments in order to support its ongoing operations through changing product lifecycles and economic conditions.

The following is an example of how fluctuations in demand for the consumer electronic products of Dolby's licensees can affect Dolby's revenue stream. From fiscal year 2007 to fiscal year 2008, there was a 39% increase in licensing revenue. Most notably, this increase was driven by increased revenue in the PC, broadcast, gaming and mobile markets. The increase in revenue in the PC market in 2008 was primarily attributable to licensing related to Microsoft

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Vista Home Premium and Ultimate Edition. Dolby does not, however, expect to sustain such levels of licensing growth and licensing revenue may decrease in the remainder of fiscal 2009 due to a slowdown in consumer spending, an expected lower percentage of PCs sold with Dolby technology due to increased growth in netbooks, which do not have the Microsoft Vista operating systems, and an expected decline in sales of DVD players.

Fluctuations in the timing of royalty payments received from licensees, as well as the timing of the satisfaction of Dolby's revenue recognition criteria, can also result in fluctuations in Dolby's operating results. Royalty reports may include positive or negative corrective or retroactive royalties that cover extended periods of time. Also, there have been occasions where Dolby has recognized an unusually large amount of licensing revenue from a licensee in a given quarter because not all of Dolby's recognition criteria were met in a prior period; this has resulted in licensing revenue being recorded in a given quarter that is not indicative of the amounts of licensing revenue to be received from that licensee in future quarters. For example, in the fourth quarter of fiscal year 2006 and the second quarter of fiscal year 2007, Dolby recognized approximately \$6.7 million and \$7.7 million, respectively, in licensing revenue from two separate licensees related to royalties on shipments in prior periods.

### 3. Cash Needed for Acquisitions

Dolby also needs to maintain substantial liquid capital for possible strategic transactions, including acquisitions. Dolby has evaluated and will continue to pursue opportunities to use its liquid capital to support business and strategic objectives by acquiring and investing in businesses with complementary products, services, and/or technologies, and in order to expand the business beyond sound technologies into areas such as imaging and display, mobile devices, and broadband internet.

Dolby has been actively pursuing strategic opportunities to expand its business into non-sound technologies and to complement its existing business. For example, in November of 2007, Dolby employed a portion of its cash position to acquire a company called Coding Technologies AB ( Coding Technologies ), a privately held provider of audio compression technologies for the mobile, digital broadcast and internet markets, for approximately \$250 million (net of its cash holdings). In April 2007, Dolby acquired Brightside Technologies, Inc., a development stage company focused on enabling the capture, distribution, and display of more vibrant video on LED backlit LCD televisions, for approximately \$30 million in cash (including acquisition related costs).

4. Research and development activities

Dolby also needs to maintain substantial cash reserves to fund its research and development activities. In fiscal years 2006, 2007 and 2008, Dolby's research and development expenses were \$35.4 million, \$44.1 million and \$62.1 million, respectively, and accounted for roughly 19%, 20% and 21.7% of Dolby's total operating expenses and 13.5%, 14.9% and 17.6% of Dolby's total expenses (including the cost of revenue, which includes the cost of goods and services), respectively.

5. Dolby's cash management practices

Pending the use of its capital for its current and future operations and potential strategic transactions such as acquisitions, Dolby seeks to preserve its capital and maintain liquidity by investing in investments that are made to conserve capital and liquidity until the funds are used in the issuer's primary business or businesses ( Capital Preservation Investments ). Capital Preservation Investments constitute investment securities, as defined in section 3(a)(2) of the Act, and include highly-rated corporate and other credit-based fixed income securities, including



commercial paper, corporate and municipal bonds. To preserve its capital and maintain liquidity, Dolby also invests in instruments excluded from the definition of investment securities, as defined in section 3(a)(2) of the Act, including Government securities, as defined in section 2(a)(16) of the Act, certain securities issued by money market mutual funds, and other cash items (collectively, Government securities and cash items). The term Capital Preservation Investments does not include these Government securities and cash items.

Dolby's investments in Capital Preservation Investments constituted 84% of its investments in investment securities as of February 28, 2009. Dolby currently limits the amount of its Capital Preservation Investments so as to ensure compliance with the Act. Dolby seeks an order that would permit it regardless of where it is in its business cycle to invest more substantially in Capital Preservation Investments, in order to better support its business operations. Dolby's investments in investment securities that are not Capital Preservation Investments (excluding auction-rate certificates purchased from UBS) will be no more than 10 percent of Dolby's total assets on a consolidated basis, or, alternatively, will be no more than 25

- <sup>4</sup> Money market mutual fund holdings may be treated as cash items rather than investment securities pursuant to Willkie Farr & Gallagher, SEC No-Action Letter (Oct. 23, 2000) (Willkie letter). Pursuant to the Willkie letter, Dolby does not consider its holdings in money market mutual funds that meet the requirements set forth in the Willkie letter to be investment securities.
- <sup>5</sup> This calculation does not include auction-rate certificates that Dolby purchased from UBS AG or affiliated entities of UBS AG (together referred to as UBS). At the time Dolby purchased the auction-rate certificates from UBS, the certificates were rated investment grade and considered highly liquid. Dolby therefore considered the auction-rate certificates to be Capital Preservation Investments at the time they were purchased. Since that time, a relatively small amount of the auction-rate certificates have fallen below investment grade. In addition, since the time of investment, the auction-rate securities markets have experienced severe illiquidity. Dolby has achieved some liquidity for its auction-rate certificates through its acceptance of put rights that permit Dolby to put the certificates to UBS AG at par value during a two-year period commencing in June 2010. Nevertheless, Dolby, for purposes of this Application, is not treating its existing auction-rate certificates as Capital Preservation Investments. If the auction-rate certificates were treated as Capital Preservation Investments, Dolby's investments in Capital Preservation Investments would constitute 99.7% of its investments in investment securities as of February 28, 2009.

percent of Dolby's total assets on a consolidated basis provided that at least 75 percent of such investments are investments in securities of issuers that complement Dolby's core operating business or that are otherwise strategic ventures for Dolby.

Dolby's Audit Committee, pursuant to a delegation by its Board of Directors, oversees Dolby's investment practices and defines the parameters for its investment activities. Dolby does not invest in securities for short-term speculative purposes.

### III. REASON FOR REQUESTING RELIEF

As explained above, Dolby, directly and through its wholly-owned subsidiaries, since inception has been and currently is primarily engaged in the business of developing and delivering products and technologies that are employed throughout the entertainment creation, distribution and playback process to enhance the entertainment experience, as described in detail above. However, because of Dolby's need to maintain substantial liquid capital, Dolby believes that from time to time it may fall within section 3(a)(1)(C)'s definition of investment company. Because of Dolby's concern that it may from time to time fall within section 3(a)(1)(C), Dolby has and continues to rely upon and comply with the requirements of Rule 3a-1 under the Act. Rule 3a-1 provides an exclusion from the definition of investment company if, on a consolidated basis with its wholly-owned subsidiaries, no more than 45% of a company's

<sup>6</sup> Because Dolby monitors its compliance with the Act under Rule 3a-1, it does not calculate its assets and income under the requirements set forth in section 3(a)(1)(C) and does not have compliance calculations performed under section 3(a)(1)(C)'s 40% test. Rather, all compliance calculations of assets and income including those set forth in this Application are performed under Rule 3a-1's requirements. As a result, all of Dolby's calculations treat Dolby's wholly-owned subsidiaries on a consolidated, rather than an unconsolidated, basis, as required by Rule 3a-1. We note further that Dolby reports its financial information in accordance with Generally Accepted Accounting Principles (GAAP) which requires consolidation of Dolby's subsidiaries. Constructing unconsolidated and therefore non-GAAP financials would be extraordinarily expensive and impractical for an operating company such as Dolby. In addition to Dolby's reliance on Rule 3a-1 and its use of GAAP financial reporting, Section IV.A.4 of this Application, titled Nature of Assets, provides a discussion of why Dolby thinks that using consolidated figures provides a better representation of its business operations.

total assets, exclusive of Government securities and cash items, consists 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.

Due to its reliance on Rule 3a-1, Dolby currently limits its investments in Capital Preservation Investments and, as a result, invests its liquid capital more heavily in Government securities and cash items so as to ensure that its investment securities remain within the limits of the asset component of Rule 3a-1's 45% test. Dolby believes that managing its Capital Preservation Investments to remain in compliance with the asset component of the 45% test causes it, from time to time, to greatly underutilize its cash management potential to the detriment of the Company and its shareholders. Dolby believes that, consistent with prudent investment management principles, it could more effectively utilize its liquid capital by investing more heavily in Capital Preservation Investments. Dolby is limited in this regard by the constraints of Rule 3a-1's 45% test.

Therefore, rather than continuing to rely on Rule 3a-1, which causes it to manage its liquid capital in a manner that it believes is detrimental to itself and its shareholders, Dolby now seeks an order pursuant to section 3(b)(2) of the Act declaring that it is primarily engaged in a

<sup>7</sup> For example, as of September 28, 2007, the end of Dolby's fiscal year, approximately 41% of Dolby's total assets (excluding Government securities and cash items) were invested in investment securities as calculated under Rule 3a-1. However, if Dolby had not been constrained by Rule 3a-1's 45% test in managing its liquid capital, it may have decided that it would have been more prudent to invest more of its assets in Capital Preservation Investments rather than holding them in Government securities and cash items. If, by way of example, Dolby could have invested *all* of its available liquid capital (*i.e.*, all investment securities plus Government securities plus cash items) in Capital Preservation Investments as of September 28, 2007, roughly 70% of its total assets (excluding Government securities and cash items) would have been invested in investment securities as calculated under Rule 3a-1. Dolby does not intend to invest all of its liquid capital in Capital Preservation Investments; however, as this example is intended to demonstrate, if unconstrained by Rule 3a-1's 45% test, Dolby's prudent management of its available cash is likely to result, at times, in investments in Capital Preservation Investments in excess of 45% of its total assets (excluding Government securities and cash items).

business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is excluded from the definition of investment company in section 3(a)(1) of the Act.

#### IV. RELEVANT LEGAL PROVISIONS AND DISCUSSION

Under section 3(a)(1) of the Act, an issuer meeting one or more of the following provisions is considered an investment company:

- (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;
- (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or
- (C) 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 exceeding 40 percentum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis (the 40% test).

Section 3(a)(2) of the Act defines investment securities to include all securities except: (A) Government securities, (B) securities issued by employees securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which: (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in [section 3(c)(1) or 3(c)(7) of the Act]. Government securities are defined in section 2(a)(16) of the Act generally as those securities issued or guaranteed by the United States or its authorized instrumentality.

Dolby is not and does not hold itself out as being engaged primarily, or propose to engage primarily, in the business of investing, reinvesting, or trading in securities within the meaning of section 3(a)(1)(A) of the Act. Dolby also is not engaged in the business of issuing face-amount certificates of the installment type within the meaning of section 3(a)(1)(B) of the Act. Accordingly, neither sections 3(a)(1)(A) or 3(a)(1)(B) of the Act apply.

However, because of the nature of Dolby's business, as described above, and its need to maintain large cash reserves, Dolby believes that its investment securities from time to time may exceed 40% of its total assets, exclusive of Government securities and cash items, on an unconsolidated basis.<sup>8</sup> Dolby's investment securities include its Capital Preservation Investments as well as an investment in a private business with complementary products, services and technologies (which represented approximately 0.1% of Dolby's total consolidated assets (excluding Government securities and cash items) as of February 28, 2009) and Dolby's current investment in auction-rate certificates purchased from UBS (which represented approximately 6.2% of Dolby's total consolidated assets (excluding Government securities and cash items) as of February 28, 2009).

Notwithstanding whether or not Dolby meets the definition of investment company under section 3(a)(1)(C) of the Act, section 3(b) of the Act excludes from the category of investment company:

- (1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

<sup>8</sup> As noted above in footnote 6, Dolby monitors its compliance with the Act under Rule 3a-1, and therefore does not calculate its assets and income under the requirements set forth in section 3(a)(1)(C) and does not have compliance calculations performed under section 3(a)(1)(C)'s 40% test.

- (2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses .

Dolby believes that it is exempt from the Act pursuant to section 3(b)(1), which is a self-executing provision. Nevertheless, absent a Commission order under section 3(b)(2), Dolby's status as an investment company could be subject to challenge. To resolve this uncertainty, Dolby seeks a Commission order pursuant to section 3(b)(2) declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is excluded from the definition of investment company in section 3(a)(1) of the Act.

**A. Dolby is Not, and Does Not Hold Itself Out as Being, Primarily Engaged in the Business of Investing, Reinvesting, Owning, Holding or Trading in Securities**

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.<sup>9</sup> Each of these factors is discussed below.

1. Historical Development.

(a) The Company's Historical Development. Dolby was founded in 1965 by Ray Dolby to develop noise reduction technologies. Two years later in 1967, Dolby was incorporated as a New York corporation, then was reincorporated in California in 1976 and in

<sup>9</sup> See *Tonopah Mining Company of Nevada*, 26 S.E.C. 426, 427 (1947).

Delaware in 2004. In 2005, Dolby conducted its initial public offering on The New York Stock Exchange.

Dolby now maintains a number of wholly-owned subsidiaries in various jurisdictions, some of which, in turn, maintain other wholly-owned subsidiaries of their own. As stated above, these subsidiaries include DLI, a subsidiary which is Dolby's main operating entity; DLLC, a subsidiary that holds the majority of Dolby's intellectual property; and Via Licensing, a subsidiary that administers joint licensing programs. Dolby is heavily involved in the research and development of new technologies. Dolby's revenue comes almost exclusively from its licensing, sales, and services. In fiscal years 2006, 2007 and 2008 licensing revenue represented 77%, 80% and 84% of Dolby's total revenue, respectively, and products and support services revenue represented 23%, 20% and 16% of its total revenue, respectively.

(b) The Development of Dolby Technologies, Products, and Services. Since its founding in 1965, Dolby 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 1966, Dolby manufactured its first product, a one-channel A-type noise reduction system, which revolutionized audio recordings in the 1960s and 1970s. Dolby undertook the development of a consumer version of this noise reduction system and the result in 1968 was the introduction of Dolby B-type noise reduction. As work on the B-type system neared completion, Dolby made the decision to manufacture professional audio products only, and to license technology appropriate for consumer applications. Another key decision in the establishment of the Dolby licensing program was to license its technology developments in terms of a specific, potentially popular application, such as audio cassettes and ICs. In the late 1960s, Dolby began to seek out additional applications for its noise reduction technology,

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including film sound, and Dolby began creating products to improve film sound from a mono format to a multi-channel stereo sound format. In the early 1980s, Dolby began researching digital audio and proceeded to bring sound technologies and products into the digital age. In recent years, Dolby has expanded its focus on developing and delivering new audio and video technologies that enhance the entertainment experience. Dolby has continued to license its technologies to manufacturers of consumer electronics products and media software vendors and sell its products and related services.

2. Public Representations of Policy. Dolby 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 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 technologies that improve the entertainment experience. It has stated that it delivers innovative technologies through the licensing of proprietary technologies, design and manufacturing of products, and the provision of services. Dolby 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 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. Dolby does not hold itself out to the public, through press releases, public statements, or in any other manner, as an investment company within the meaning of the Act or as engaging in the business of investing, reinvesting or trading in securities; nor is Dolby or the Dolby brand generally perceived to be associated with the activities of an investment company



within the meaning of the Act. Dolby is world renowned for its technology contributions that enhance the entertainment experience.

3. Dolby's Officers and Directors.

(a) The Background of Dolby's Outside Directors

Peter Gotcher has served as a director since June 2003 and accepted the role of Executive Chairman of the Board of Directors effective March 1, 2009. In addition to providing leadership for the board, Mr. Gotcher brings extensive experience in Dolby's traditional markets and emerging media, providing valuable perspective for the board and the Chief Executive Officer. Mr. Gotcher is an independent investor. Mr. Gotcher was a venture partner with Redpoint Ventures, a private investment firm, from September 1999 to January 2003. Prior to joining Redpoint Ventures, Mr. Gotcher was a venture partner with Institutional Venture Partners, a private investment firm, from 1997 to September 1999. Prior to joining Institutional Venture Partners, Mr. Gotcher founded and served as the president, chief executive officer and chairman of the board of Digidesign from 1984 to 1995. Digidesign was acquired by Avid Technology, Inc., a media software company, in 1995 and Mr. Gotcher served as the general manager of Digidesign and executive vice president of Avid Technology from January 1995 to May 1996. Mr. Gotcher serves on the boards of directors of several private companies. Mr. Gotcher holds a B.A. degree in English literature from the University of California at Berkeley.

Ray Dolby, founder and former chairman of Dolby Laboratories, was born in Portland, Oregon and grew up on the San Francisco peninsula and has served as a director since 1967. From 1949 through 1952 he worked on audio and instrumentation projects at Ampex Corporation, where from 1952 through 1957, as a student, he was mainly responsible for the development of the electronics aspects of the Ampex video tape recording system. He received

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his B.S. in electrical engineering from Stanford University in 1957 and, as a Marshall Scholar, left Ampex to pursue further studies at Cambridge University in England. He received a Ph.D. degree in physics from Cambridge in 1961. In 1963, he took up a two year appointment as a United Nations technical advisor in India, then returned to England in 1965 to found Dolby Laboratories in London. In 1976 he established further offices, laboratories and manufacturing facilities in California. He holds more than 50 United States patents and has written papers on video tape recording, long wavelength X-ray analysis and noise reduction. Honors and Awards Audio Engineering Society: Fellow and Past President; Silver Medal; Gold Medal. British Kinematograph Sound and Television Society: Fellow; Science and Technology Award. Society of Motion Picture and Television Engineers: Fellow; Samuel L. Warner Memorial Award; Alexander M. Poniatoff Gold Medal; Progress Medal; Honorary Member. Academy of Motion Picture Arts and Sciences: Science and Engineering Award; Oscar Award. National Academy of Television Arts and Sciences: Emmy Award. National Academy of Recording Arts and Sciences: Grammy Award. United States: National Medal of Technology. United Kingdom: Honorary O.B.E.

Nicholas Donatiello has served as a director since February 2009. Mr. Donatiello has been the President and CEO of Odyssey Ventures, Inc. since September 1993. Prior to founding Odyssey, he was Press Secretary and Campaign Manager for US Senator Bill Bradley and a consultant at McKinsey & Company. Mr. Donatiello directs three of the American Funds managed by Capital Research and Management. He is also a director of Classmates Media Corporation, a wholly owned subsidiary of United Online, as well as a number of other private companies. In addition, Mr. Donatiello served as chairman of the board of Northern California

Public Broadcasting, Inc. from 2006 through 2008. Mr. Donatiello holds a B.S. in engineering from Princeton University and a M.B.A. from Stanford University.

Ted W. Hall has served as a director since February 2007. Mr. Hall has been the General Partner of Long Meadow Ranch and President of the associated Long Meadow Ranch Winery in Napa Valley since 1994. From 1998 to 2007 Mr. Hall served as Chairman of Tambourine, Inc., a specialty music production and distribution company. He has been the Managing Director of Mayacamas Associates, his own consulting firm, since 2000. From 1972 to 2000 Mr. Hall served in a variety of senior leadership roles at McKinsey & Company, a leading global consulting firm, including as an elected member of the McKinsey shareholder committee, which is McKinsey's board of directors, from 1988 to 2000. Mr. Hall is a former Chairman of the Board of the Robert Mondavi Corporation, a global producer of fine wines, and has served on the boards of directors of a wide variety of educational and civic organizations, including the Stanford Business School's Advisory Council and the San Francisco Symphony. Mr. Hall also serves on the board of directors of Williams-Sonoma, Inc. and Peet's Coffee & Tea, Inc. A former professional trombonist and record producer, Mr. Hall is a voting member of the National Academy of Recording Arts & Sciences. He holds a B.S.E. degree in electrical engineering from Princeton University and a M.B.A. from Stanford University.

Bill Jasper has served as a director since June 2003. Mr. Jasper joined Dolby in February 1979 and served as its President and Chief Executive Officer from 1983 until his retirement effective in March 2009. Mr. Jasper served in a variety of positions at Dolby prior to becoming President, including as Dolby's Vice President, Finance and Administration and Executive Vice President. Mr. Jasper is a member of the Audio Engineering Society, the Society of Motion Picture and Television Engineers and an at-large member of the Academy of Motion Picture Arts

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and Sciences. Mr. Jasper holds a B.S. degree in industrial engineering from Stanford University and a M.B.A. from the University of California at Berkeley.

Sanford R. Robertson has served as a director since June 2003. Mr. Robertson has been a partner of Francisco Partners, a technology buyout fund, since 1999. Prior to founding Francisco Partners, Mr. Robertson was the founder and Chairman of Robertson, Stephens & Co., a technology investment bank formed in 1978, and sold to BankBoston in 1998. Since the sale, Mr. Robertson has been a technology investor and advisor to several technology companies. Mr. Robertson was also the founder of Robertson, Colman, Siebel & Weisel, later renamed Montgomery Securities, another technology investment bank. Mr. Robertson also serves on the boards of directors of Pain Therapeutics, Inc. and salesforce.com, inc. Mr. Robertson holds a B.B.A. and a M.B.A. from the University of Michigan.

Roger S. Siboni has served as a director since July 2004. Mr. Siboni served as the chairman of the board of directors of E.piphany, Inc., a provider of customer interaction software, from December 1999 until E.piphany, Inc. was acquired by SSA Global Technologies, Inc. in September 2005. Mr. Siboni also served as president and chief executive officer of E.piphany from August 1998 to July 2003. From July 1996 to August 1998, Mr. Siboni was deputy chairman and chief operating officer of KPMG Peat Marwick, a member firm of KPMG International, an accounting and consulting firm. From July 1993 to June 1996, Mr. Siboni was managing partner of the KPMG Peat Marwick LLP's information, communication and entertainment practice. Mr. Siboni also serves on the boards of directors of Cadence Design Systems, Inc. and Classmates Media Corporation, a wholly owned subsidiary of United Online. Mr. Siboni holds a B.S. degree in business administration from the University of California at Berkeley.

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Avadis Tevanian, Jr. has served as a director since February 2009. Mr. Tevanian is the former Software Chief Technology Officer of Apple Inc. As Software CTO, Mr. Tevanian focused on setting company-wide software technology direction for Apple. Prior to his tenure as Software CTO, Mr. Tevanian was Senior Vice President of Software at Apple, a role he took on when Apple acquired NeXT, Inc. in 1997. As Senior Vice President of Software, Mr. Tevanian led the software engineering team responsible for the creation of Mac OS X and worked as part of Apple's executive team. Before joining Apple, he was Vice President of Engineering at NeXT, Inc. and was responsible for managing NeXT's engineering department. Mr. Tevanian started his professional career at Carnegie Mellon University, where he was a principal designer and engineer of the Mach operating system upon which Nextstep, and now OS X, is based. He holds a BA degree in mathematics from the University of Rochester and MS and PhD degrees in computer science from Carnegie Mellon University.

(b) The Background of Dolby's Executive Officers

The positions and backgrounds of Dolby's executive officers are as follows.

Kevin Yeaman became Dolby's President and Chief Executive Officer in March 2009 and has been a member of the board of directors since he assumed the role of Chief Executive Officer. He joined Dolby as the chief financial officer and vice president in October 2005, was appointed senior vice president in November 2006 and executive vice president in July 2007. Prior to joining Dolby, he worked for seven years at E.piphany, Inc., a publicly traded enterprise software company, most recently as the chief financial officer from August 1999 to October 2005. Previously, Mr. Yeaman also served as Worldwide Vice President of Field Finance Operations for Informix Software, Inc., a provider of relational database software from February 1998 to August 1998. From September 1988 to February 1998, Mr. Yeaman served in Silicon

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Valley and London in various positions was at KPMG Peat Marwick LLP, an accounting firm, serving most recently as a senior manager. Mr. Yeaman holds a B.S. degree in commerce from Santa Clara University.

Mark Anderson joined Dolby as Vice President and General Counsel in November 2003, was appointed the corporate secretary in March 2004, Senior Vice President in November 2006 and Executive Vice President in July 2007. Mark Anderson is responsible for global legal compliance for Dolby. Prior to joining Dolby, Mr. Anderson was an associate and then a partner at the law firm of Farella Braun & Martel LLP, from August 1989 to November 2003. Mr. Anderson is a certified public accountant and holds a B.S. degree in business administration from the University of North Carolina at Chapel Hill and a J.D. from Golden Gate University School of Law.

Ramzi Haidamus has served as the Executive Vice President, Sales and Marketing, since August 2007. As Executive Vice President, Sales and Marketing, Ramzi Haidamus leads the company global sales and marketing functions for Dolby Laboratories by implementing overall go-to-market plans and partnering with Dolby's Products and Technologies group to develop product strategy. His responsibilities include overseeing product marketing, corporate marketing, business development, and sales, as well as field operations and customer support worldwide. Previously, since joining Dolby in 1996, Mr. Haidamus served as the senior vice president and general manager of the consumer division, as the president and general manager of Via Licensing Corporation, and in a variety of other positions at Dolby, including director of business development, technology and business strategist, and licensing manager. Prior to joining Dolby, Mr. Haidamus worked at Stanford Research Systems for seven years. Mr. Haidamus holds a B.S. degree in electrical engineering and a M.S. degree in computer

engineering from the University of the Pacific. Mr. Haidamus is a member of the Licensing Executives Society and is on the board of the Bay Area American Red Cross.

Michael Rockwell is Dolby's Executive Vice President, Products and Technologies. Mr. Rockwell oversees the company's development of new technologies and products, which include managing the global engineering, manufacturing, technology, and research teams. Mr. Rockwell joined Dolby in November 2007 as Senior Vice President, Worldwide Engineering and was appointed to his current role in March 2009. Before joining Dolby, Mr. Rockwell was Senior Vice President and Chief Technology Officer at Avid Technology, Inc., where he was responsible for determining and shaping the technical strategy across Avid's entire product line. Prior to his appointment as CTO, Mr. Rockwell served as Chief Architect of Software Engineering at Digidesign, which was acquired by Avid's audio division. While at Digidesign, he served as the technical lead for its flagship product, Pro Tools. Before Digidesign, Mike was the president and owner of a software business and audio/visual production company, Rockwell Digital. Early in his career as a freelance recording engineer, Mr. Rockwell worked on projects such as The Wonder Years, Cadillac Man, and Cocktail.

Michael Novelly has served as Dolby's Interim Chief Financial Officer since Mr. Yeaman's appointment as Chief Executive Officer effective March 2009. As Dolby's Interim Chief Financial Officer, Mr. Novelly has worldwide responsibility for the company's financial planning and analysis, taxation, treasury, accounting, and investor relations. Mr. Novelly joined Dolby as Vice President of Finance Planning and Analysis in 2008 and has more than 20 years experience in public accounting & finance. Prior to Dolby, Mr. Novelly was Vice President and Assistant Controller at Time Warner Inc. His background also includes CFO positions with Red Herring Communications, Inc., Quokka Sports, Inc. and PolyGram Television.

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(c) The Activities of the Officers and Directors

Dolby's 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's executive officers spend substantially all of their time managing Dolby's business of developing and delivering products and technologies for the entertainment creation, distribution and playback process. These activities include, among others, product design and engineering, sales and marketing, finance, business affairs, transactional and corporate legal services and protection and enforcement of intellectual property rights. Each officer's specific activities are detailed above. Dolby's Chief Financial Officer, who, until March 2009, was Kevin Yeaman, has spent 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.

(d) The Activities of Other Employees

As of September 26, 2008, Dolby had approximately 1,153 employees in locations throughout the world. In addition to the officers discussed above, only five employees spend a small portion their time on matters relating to the management of Dolby's investment securities in that they account for and monitor cash and investment balances. Two of these employees, the Vice President, Tax and the Corporate Controller, each spends less than 10% of his time on investment matters. The other three of these employees spend approximately 5% of their time on investment matters. As part of their time spent on investment matters, these five employees manage Dolby's long-term investments (*i.e.*, investments in excess of one year). Dolby does not invest in, and consequently no Dolby employees spend any time on, investments that mature



more than 36 months from the date of purchase. Dolby's cash management activities are managed both internally by the Dolby employees specified above and by several outside investment managers, whose activities are supervised by the same employees. Four employees are involved in investment matters as part of Dolby's searches for possible acquisition targets whose operations would strategically complement Dolby's core business of enhancing the entertainment experience by the licensing of proprietary technologies, design and manufacturing of products, and provision of services. Dolby's remaining employees are involved in research and development, engineering, sales and marketing, finance, business affairs, transactional and corporate legal services and protection and enforcement of intellectual property rights.

4. Nature of Assets. For purposes of determining its primary business, Dolby believes that consolidating its financial results with those of its wholly-owned subsidiaries provides a better representation of its business operations.<sup>10</sup> Dolby conducts its business of developing and delivering products and technologies that are employed throughout the entertainment creation, distribution and playback process to enhance the entertainment experience through 24 wholly-owned subsidiaries. To the extent that section 3(a)(1)(C) requires unconsolidated financial statements because consolidation of an issuer with a subsidiary that is majority-owned, but not wholly-owned, may distort the relative value of the issuer's investment securities to its other assets, this requirement is inapplicable to Dolby. Dolby believes that consolidating its financial statement with those of its wholly-owned subsidiaries will not result in these types of distortions for the same reasons Rule 3a-1(c) under the Act generally requires an issuer to consolidate its financial statements with those of any wholly-owned subsidiaries for

<sup>10</sup> None of Dolby's wholly-owned subsidiaries are investment companies or companies that rely on the exclusions from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

purposes of the asset and income tests of the Rule.<sup>11</sup> Dolby thus believes that consolidated dollar values and percentages present a more accurate view of Dolby's business and financial position and a more reliable basis for evaluating its assets and income under the Act.

When consolidated with its wholly-owned subsidiaries, as of February 28, 2009, Dolby's investment securities—which consisted of its Capital Preservation Investments, as well as an investment in a private business with complementary products, services and technologies, which represented approximately 0.1% of Dolby's total consolidated assets (excluding Government securities and cash items) and Dolby's current investment in auction-rate certificates purchased from UBS, which represented approximately 6.2% of Dolby's total consolidated assets (excluding Government securities and cash items)—were valued at \$392.9 million and constituted approximately 39.3% of Dolby's total assets (excluding Government securities and cash items). As of February 28, 2009, Dolby's balance sheet included the following non-intellectual property and non-investment security assets: cash of \$138.9 million, money market mutual funds of \$211.3 million, and Government securities of \$37 million. Dolby expects to continue investing in Capital Preservation Investments as well as Government securities and cash items in order to fund its current and future operations, which, as discussed above, are highly capital intensive, highly cyclical, and require continuous research and development.

In addition to its liquid assets, a significant portion of Dolby's assets, on a consolidated basis with its wholly-owned subsidiaries, consists of intangible assets, including internally-developed intellectual property. The significance of Dolby's internally-developed intellectual property assets to its business is evidenced by the revenue Dolby generates from licensing and product sales; Dolby's research and development activities to develop and expand its existing

<sup>11</sup> See *Certain Prima Facie Investment Companies*, Investment Company Act Rel. No. 10937 (Nov. 13, 1979) at n.5.

intellectual property; the activities of Dolby's employees, officers and directors in developing and exploiting its intellectual property;

Dolby's public representations regarding its intellectual property; and the importance of Dolby's intellectual property to the operation and development of its core business of developing and delivering products and technologies for the entertainment creation, distribution and playback process.

Notwithstanding the value of Dolby's internally-developed intellectual property to Dolby's business, its value is not recorded on Dolby's consolidated balance sheet as it is not treated as an asset under Generally Accepted Accounting Principles (GAAP<sup>12</sup>). Therefore, while the market recognizes the value of these intangible assets, they are not recognized as an asset for purposes of the Act. By contrast, a company that acquires intellectual property (rather than developing it internally) is permitted to treat the acquired intellectual property as an asset under GAAP. As a result, looking only at asset composition, firms with acquired intellectual property are less likely to have difficulty remaining below the asset thresholds of either section 3(a)(1)(C) of the Act or Rule 3a-1 thereunder than companies, such as Dolby, with internally-developed intellectual property. Thus, 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 thereunder significantly understate the relative value of Dolby's internally-developed intellectual property assets and significantly overstate the relative value of Dolby's investment securities.<sup>13</sup> This asset-skewing has the effect of penalizing a company such as Dolby by constraining its cash management activities without

<sup>12</sup> See 17 C.F.R. §§ 210.6-01 - 210.6-10.

<sup>13</sup> As noted in *SEC v. National Presto*, 486 F.3d 305 (7<sup>th</sup> Cir. 2007), looking primarily at accounting assets has a potential to mislead. The court then used the example of a firm that owns substantial assets such as patents or trademarks that do not show up on its balance sheet as assets. *Id.* at 314. Dolby owns such internally developed intellectual property.

similarly constraining the cash management activities of a company with acquired intellectual property that engages in a business similar to Dolby's.

If granted an order under section 3(b)(2), Dolby anticipates that, as is currently the case, in the future its investments in investment securities that are not Capital Preservation Investments (excluding the auction-rate certificates purchased from UBS) will be no more than 10 percent of Dolby's total assets on a consolidated basis, or, alternatively, will be no more than 25 percent of Dolby's total assets on a consolidated basis provided that at least 75 percent of such investments are investments in securities of issuers that complement Dolby's core operating business or that are otherwise strategic ventures for Dolby.

5. Sources of Income and Revenue. As illustrated by the table below, for the four fiscal quarters ended June 27, 2008, most of Dolby's net income before taxes<sup>14</sup> was generated by its operating activities.

	Income Before Taxes	Income From Operations (Revenue minus Cost of Revenue minus Operating Expenses)	Income From Operations as a % of Income Before Taxes	Investment Income (Interest Income)	Investment Income as a % of Income Before Taxes
<b>Third Quarter, fiscal 2008</b>	\$ 71 million	\$ 68 million	96%	\$ 3 million	4%
<b>Second Quarter, fiscal 2008</b>	\$ 87 million	\$ 85 million	97%	\$ 4 million	5% <sup>15</sup>

<sup>14</sup> Because investment income and income from operations are pre-tax figures, Dolby believes that it would be misleading to present these figures as a percentage of net (after-tax) income. For example income from operations as a percentage of net (after-tax) income would result in a percentage in excess of a 100%.

<sup>15</sup> The sum of the percentages of income from operations as a percentage of income before taxes and investment income as a percentage of income before taxes do not always equal 100%. This is because income before taxes includes two categories of expenses, interest expense and other expense, that do not get included in income from operations or investment income.

<b>First Quarter, fiscal 2008</b>	\$ 73 million	\$ 67 million	93%	\$ 6 million	8%
<b>Fourth Quarter, fiscal 2007</b>	\$ 57 million	\$ 51 million	91%	\$ 7 million	12%
<b>Total</b>	\$ 288 million	\$ 271 million	94%	\$ 20 million	7%

As these numbers demonstrate, the overwhelming majority of Dolby's income is operating income generated by its licensing and products and services sales activities.

The above five-factor analysis demonstrates that Dolby is primarily engaged in a non-investment company business and satisfies the standards for an order pursuant to section 3(b)(2) of the Act.

**B. An Order under Section 3(b)(2) Would Better Serve the Policies Underlying the Act and Avoid Harm to Dolby's Shareholders**

If the Commission declines to grant the relief requested in this Application, Dolby would be faced with two courses of action: (1) continue to manage its investment of its liquid capital in Capital Preservation Investments under the constraints imposed by Dolby's reliance on Rule 3a-1 under the Act; or (2) compliance with the registration and regulatory requirements of the Act. Either alternative would disadvantage Dolby's shareholders without serving any of the policies underlying the Act.

1. Continued Reliance on Rule 3a-1. Dolby's continued management of its liquid capital in Capital Preservation Investments under the constraints of Rule 3a-1, while not material in terms of Dolby's aggregate net income, adversely affects Dolby's profitability. In this respect, it has been Dolby's experience that net after tax yield on Government securities, money market mutual funds, and demand deposits is significantly less than the average return available on other short-term instruments. This is especially true recently with Government securities sometimes

yielding negative returns. Such lower returns could be viewed as wasteful of corporate assets and not in the best interest of Dolby's shareholders.

2. Registration under the Act. Compliance with the Act's registration and other requirements would advance no clear public purpose and potentially entail greater costs and harm to Dolby and its shareholders.

(a) No Meaningful Protection to Shareholders. Dolby has a class of equity securities registered under section 12 of the Securities and Exchange Act, as amended ( 1934 Act ), and therefore is subject to the reporting requirements under the 1934 Act. Furthermore, shares of Dolby's common stock are traded on the New York Stock Exchange ( NYSE ), and Dolby must comply with the additional reporting requirements of the NYSE. As a result, shareholders of, and potential investors in, Dolby have regular access to current information concerning Dolby's operations. Thus, requiring Dolby to register under the Act would not materially improve the nature, quality, or quantity of the information about Dolby presently received by or available to its shareholders or potential investors.

(b) Misleading Presentation of Financial Information. The manner of presentation required for investment company financial reports differs materially from the methodology employed by Dolby and prescribed by GAAP. Investment company financial statements report assets at their current fair market values. Dolby would incur costly changes in its financial reporting if it were required to register under the Act. The required changes to Dolby's financial reporting would include a change in the format of existing financial statements and the preparation of additional statements required for investment companies. If Dolby were required to file financial reports under the Act, its directors would be required to evaluate substantial quantities of tangible and intangible assets on a quarterly or semiannual basis and

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make a good-faith attempt to establish the current fair market value for each such tangible and intangible asset. This would be extremely difficult and unreliable and, more importantly, could well be misleading to Dolby's shareholders. In addition, preparation of consolidated financial information in accordance with investment company practice would make the Dolby's financial information incompatible with other entities within the industry.

(c) Expensive and Burdensome Regulation. To require Dolby, a company not primarily in the business of investing in securities, to comply with the regulatory provisions of the Act would be expensive, burdensome and contrary to the best interests of its shareholders who invested in Dolby as an entertainment technology company and not as an investment company. Compliance with the Act would require Dolby to devote considerable financial, administrative and legal resources to the preparation of registration statements that meet the requirements of the Act, and to the creation of internal administrative mechanisms that comply with the additional recordkeeping and reporting requirements of the Act. This would create a significant burden on Dolby's financial and personnel resources, which would in turn have a negative impact on its management and profitability. This requirement also would significantly detract from Dolby's efforts toward managing its entertainment technology operations.

(d) Forced Change in Dolby's Business. The imposition of the Act's regulatory scheme upon Dolby would certainly cause material changes in its operating strategies. Dolby would be restricted as to all future borrowings by the asset-coverage requirements in section 18(a) of the Act. Sections 18 and 23 together would severely limit the corporate financing alternatives otherwise normally available to Dolby. Furthermore, sections 17 and 18 restrict the range of incentive compensation arrangements that may be offered to officers, directors and employees, and specifically prohibit the issuance of any stock options to

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these groups. Especially among technology companies, stock options are an effective form of incentive and means for aligning employees interests with those of shareholders in general. It has been Dolby's practice to issue stock options to substantially all employees of the company. Dolby believes that a prohibition on the issuance of stock options in particular would lead potentially to the loss of key employees and other adverse consequences, negatively affecting shareholder returns.

The aggregate effect of these types of changes on Dolby's business strategy would materially change the character of Dolby in ways its shareholders never contemplated when making their investments causing considerable harm to the shareholders. Dolby's shareholders would no longer own interests in an entertainment technology company, but instead in a company forced to operate like an investment company. Moreover, as demonstrated above, Dolby would experience substantially higher costs in complying with the Act and would experience material disruption of its entertainment technology business.

#### **V. SUPPORTING PRECEDENT**

The Commission has issued numerous orders pursuant to section 3(b)(2) involving companies with a history of operations, public representations, officer and director participation, asset character and income character comparable to Dolby, including: RealNetworks, Inc., Investment Company Act Rel. No. 27877 (June 28, 2007)(notice) and 27888 (July 24, 2007) (order); Hutchinson Technology Incorporated, Investment Company Act Rel. No. 27215 (Jan. 25, 2006) (notice) and 27228 (Feb. 22, 2006) (order); and Applied Materials, Inc., Investment Company Act Rel. Nos. 27064 (September 13, 2005) (notice) and 27114 (October 12, 2005) (order).

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**VI. APPLICANT'S CONDITIONS**

Dolby agrees that any order granting the requested relief will be subject to the following conditions:

1. Dolby will continue to allocate and use 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.

**VII. REQUEST FOR ORDER**

For the above reasons, Dolby requests an order pursuant to 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.

**VIII. PROCEDURAL MATTERS**

Pursuant to Rule 0-2(f) under the Act, Applicant states that its address is:

Dolby Laboratories, Inc.

100 Potrero Ave.

San Francisco, CA 94103

Applicant further states that all written or oral communications concerning this Application should be directed to the persons listed on the first page of this Application.

Pursuant to Rule 0-2(c)(1) and 0-2(c)(2) under the Act, Applicant hereby states that the officer signing and filing this Application on behalf of Applicant is fully authorized to do so. Under the provisions of Applicant's certificate of incorporation, responsibility for the management of the affairs and business of Applicant is vested in its Board. Resolutions duly adopted by Applicant's Board authorizing the preparation and filing of this Application are

attached to this Application as Exhibit A. Applicant has complied with all requirements for the execution and filing of this Application in the name and on behalf of Applicant.

The Verification required by Rule 0-2(d) under the Act is attached hereto as Exhibit B.

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Applicant requests that the Commission issue an order without a hearing pursuant to Rule 0-5 under the Act.

Date: April 7, 2009

Respectfully submitted,

Dolby Laboratories, Inc.

/s/ Mark S. Anderson

By: Mark S. Anderson

Title: Executive Vice President, General Counsel and  
Secretary

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**CERTIFICATION**

I, Mark Anderson, Executive Vice President, General Counsel and Secretary of Dolby Laboratories, Inc., a Delaware corporation (Dolby or the Company), do hereby certify that the following resolutions were duly adopted by Written Consent of the Board of Directors of Dolby on April 29, 2008. I further certify that said resolutions are still in full force and effect and have not been amended or repealed.

**WHEREAS**, due to the nature of its business, the Company needs to maintain a substantial cash position that is available on short notice, regardless of its business cycle, for operations, capital expenditures, and other developments and needs to maintain substantial liquid capital for acquisitions.

**WHEREAS**, the Company seeks to preserve its capital and maintain liquidity, pending the use of such capital for its current and future operations and acquisitions, by investing in investment grade and liquid fixed income and money market investments that earn competitive market returns and provide a relatively low level of risk ( **Capital Preservation Investments** ), which include highly-rated corporate and other credit-based fixed income securities, including commercial paper and corporate and municipal bonds.

**WHEREAS**, the Company is aware that, absent an applicable exemption, its investments in Capital Preservation Investments could be deemed to be investment securities within the meaning of Section 3(a)(2) of the Investment Company Act of 1940, as amended ( **1940 Act** ), and that the Company could be deemed to be an investment company under Section 3(a)(1)(C) of the 1940 Act if it holds investment securities having a value that exceeds 40 percent of the value of its total assets (exclusive of Government securities, cash and cash items).

**WHEREAS**, the Company is aware that, absent an applicable exemption, its investments in Capital Preservation Investments could be deemed to be so-called Bad Assets as used in connection with Rule 3a-1 under the 1940 Act, and that the Company could be deemed to be an investment company if more than 45 percent of the value of its total assets (exclusive of Government securities, cash and cash items) consists of, and more than 45 percent of its net income after taxes (for the last four quarters combined) is derived from so-called Bad Assets .

**WHEREAS**, the Company and this Board have had, and do have, the intent for the Company to be engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading in securities, and the Company further believes that, notwithstanding any investments in Capital Preservation Investments, the Company is not an investment company because it is primarily engaged in the non-investment company business of developing and delivering products and technologies that improve the entertainment experience.

**RESOLVED**, that the Board hereby reaffirms that the Company is engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

**RESOLVED FURTHER**, that, based on the recommendation of the Audit Committee, the Board of Directors authorizes the Company to file with the Securities and Exchange Commission ( **SEC** ) an exemptive order application pursuant to Section 3(b)(2) of the 1940 Act seeking to permit it to make investments in Capital Preservation Investments without being deemed to be an investment company under Section 3(a)(1)(C) of the 1940 Act or Rule 3a-1 thereunder.

**RESOLVED FURTHER**, in the alternative, that based on the recommendation of the Audit Committee, the Board of Directors authorizes the Company to file with the SEC an exemptive order application pursuant to Section 6(c) of the 1940 Act seeking an exemption from registration and regulation as an investment company, as such exemption in the Company's case would be 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.

**RESOLVED FURTHER**, that the officers and employees of the Company are authorized to take any and all actions reasonably necessary or appropriate to implement these resolutions and all actions previously taken by the officers of the Company in connection with effectuating the intent and purposes of the foregoing resolutions are hereby ratified and affirmed.

IN WITNESS WHEREOF, I have set my name this 7th day of April, 2009.

/s/ Mark S. Anderson  
Name: Mark S. Anderson  
Title: Executive Vice President, General Counsel and  
Secretary

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**VERIFICATION**

**DOLBY LABORATORIES, INC.**

The undersigned states that he has duly executed the attached Application dated April 7, 2009, for and on behalf of Dolby Laboratories, Inc., that he is the Executive Vice President, General Counsel and Secretary of Dolby Laboratories, Inc., and is authorized to sign the Application on its behalf, and that all action by stockholders, directors, and other bodies necessary to authorize the undersigned to execute and file such instrument has been taken. The undersigned further states that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

*/s/ Mark S. Anderson*  
Mark S. Anderson  
Executive Vice President, General Counsel and  
Secretary

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