

Release No. 24494 (S.E.C. Release No.), Release No. 40-24494, 2000 WL 870891

Securities and Exchange Commission (S.E.C.)
Investment Company Act of 1940

IN THE MATTER OF YAHOO! INC.

3420 Central Expressway
Santa Clara, CA 95051

(812-11976)

June 13, 2000

ORDER UNDER SECTION 3(b)(2) OF THE INVESTMENT COMPANY ACT OF 1940

*1 Yahoo! Inc. filed an application on February 11, 2000, and amendments on April 5, 2000 and May 16, 2000, requesting an order under section 3(b)(2) of the Investment Company Act of 1940 ("Act"). The order would declare that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant is a global Internet new media company that offers a branded network of media, commerce and communication services.

On April 5, 2000, a temporary order was issued pursuant to section 3(b)(2) of the Act extending the automatic exemption provided for applications filed under that section in good faith until July 10, 2000 ([Investment Company Act Release No. 24377](#)). On May 18, 2000, a notice of the filing of the application was issued ([Investment Company Act Release No. 24459](#)). The notice gave interested persons an opportunity to request a hearing and stated that an order disposing of the application would be issued unless a hearing was ordered. No request for a hearing has been filed, and the Commission has not ordered a hearing.

The matter has been considered and it is found, on the basis of the information set forth in the application, as amended, that applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading securities. Accordingly,

IT IS ORDERED, under section 3(b)(2) of the Act, that the requested declaration is granted, effective immediately, subject to the conditions contained in the application, as amended.

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

Jonathan G. Katz

Secretary

Release No. 24494 (S.E.C. Release No.), Release No. 40-24494, 2000 WL 870891

Release No. 24459 (S.E.C. Release No.), Release No. IC - 24459, 72 S.E.C. Docket 1097, 2000 WL 639501

Securities and Exchange Commission (S.E.C.)
Investment Company Act of 1940

SECURITIES AND EXCHANGE COMMISSION (S.E.C.)

YAHOO! INC.; NOTICE OF APPLICATION

812-11976

May 18, 2000

*1 Agency: Securities and Exchange Commission ("Commission").

Action: Notice of application for an order under section 3(b)(2) of the Investment Company Act of 1940 (the "Act").

Summary: Applicant Yahoo! Inc. ("Yahoo!") 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. Applicant is a global Internet new media company that offers a branded network of media, commerce and communication services. On April 5, 2000, a temporary order was issued pursuant to section 3(b)(2) of the Act exempting applicant from all provisions of the Act until July 10, 2000.

Filing Dates: The application was filed on February 11, 2000 and amended on April 5, 2000 and May 16, 2000.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2000 and should be accompanied by proof of service on the applicant, 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 may request notification of a hearing by writing to the Commission's Secretary.

Addresses: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609; Applicant, 3420 Central Expressway, Santa Clara, CA 95051.

For Further Information Contact: Janet M. Grossnickle, Attorney-Adviser, at (202) 942-0526, or Mary Kay Frech, Branch Chief, at (202) 942-0564 (Office of Investment Company Regulation, Division of Investment Management).

Supplementary Information: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549-0102 (tel. 202-942-8090).

Applicant's Representations:

1. Yahoo!, a Delaware corporation, was formed in 1995. Yahoo! states that it is a global Internet new media company that offers a branded network of media, commerce and communication services. Yahoo! develops, operates and markets advertising-supported online properties, including *Yahoo!*, a branded Internet navigational service that is among the most widely used and recognized search guides on the World Wide Web. Yahoo! states that it conducts its Internet and new media business directly and through wholly-owned and majority-owned subsidiaries and Yahoo! Japan, a company that it controls within the meaning of section 2(a)(9) of the Act.¹ Yahoo! states that it is not in the business of investing, reinvesting or trading in securities.

*2 2. Yahoo! has expanded its Internet and new media business to Japan through Yahoo! Japan, which, unlike Yahoo!'s other international subsidiaries, is not majority-owned or wholly-owned by Yahoo!. Yahoo! states that Yahoo! Japan was created

in 1996 as a joint venture between Yahoo! and Softbank Corp. to establish and manage a Japanese version of the Yahoo! directory service, develop related Japanese online navigational services and conduct other related businesses. Yahoo! states that it currently owns 34% of the outstanding voting securities of Yahoo! Japan and Softbank Corp. owns 51%. Yahoo! states that Yahoo! Japan currently is a publicly traded company with shares listed on the Tokyo Stock Exchange. Yahoo! represents that Yahoo! Japan is not an investment company and is not relying on section 3(c)(1) or 3(c)(7) of the Act. As of December 31, 1999, Yahoo! states that the fair market value of Yahoo!'s interest in Yahoo! Japan was approximately \$8.4 billion, accounting for over 90% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis.

3. Yahoo! represents that it maintains a large cash position to help fund operations, research and development, and to take advantage of acquisition opportunities as they arise. Yahoo!'s cash position is currently invested in cash and government securities; Yahoo! plans to invest part of its cash position in higher-yielding corporate bonds and other high-quality debt securities that are consistent with the goal of capital preservation. Yahoo! represents that it has adopted a Corporate Investment Policy to ensure that its cash management investments consist of only certain high-quality predominately short-term debt instruments (together with cash items and government securities, "Cash Management Investments"). Yahoo! represents that it needs sufficient cash for bona fide business purposes, such as funding operations, funding research and development and improvements to its network, and funding strategic acquisitions. Yahoo! also states that it does not engage in speculative short-term trading with its Cash Management Investments.

4. Yahoo! states that it makes certain small strategic, non-controlling investments in companies that can complement or enhance Yahoo!'s Internet and new media business ("Strategic Investments"). Yahoo! states that it carries these investments on its balance sheet as "long-term" assets and does not invest or trade in such securities for short-term or speculative purposes. As of December 31, 1999, the value of the Strategic Investments was less than 5% of the value of Yahoo!'s total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it does not hold Strategic Investments because of the possibility of gain resulting from an increase in the market price of the securities, but primarily as a means to enter into or solidify business relationships with companies to expand Yahoo!'s business lines. Yahoo! further states that it uses Strategic Investments as a way of outsourcing research and development instead of developing technology internally.

Applicant's Legal Analysis:

*3 1. Yahoo! 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% 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 (i) are not investment companies, and (ii) are not relying on the exclusions from the definition of investment company in section 3(c)(1) or 3(c)(7) of the Act.

3. Yahoo! states that its interest in Yahoo! Japan represents over 90% of its total assets (exclusive of government securities and cash items) on an unconsolidated basis. Yahoo! states that it cannot rely upon rule 3a-1 under the Act because, although it owns over 25% of the outstanding voting securities of Yahoo! Japan, it does not primarily control Yahoo! Japan because another entity owns a larger percentage of voting securities.² If the interest in Yahoo! Japan is deemed to be an "investment security" (as that term is defined in section 3(a)(2) of the Act), Yahoo! may be deemed to be an investment company within the meaning of section 3(a)(1)(C) of the Act.

4. Yahoo! states that it views its controlling interest in Yahoo! Japan as an operating asset. Yahoo! represents that it plays a significant role in the management of Yahoo! Japan and is fully involved both directly and indirectly, in the operations of

Yahoo! Japan. Yahoo! states that it directly oversees the operations of Yahoo! Japan through its involvement with the board of directors of Yahoo! Japan. Yahoo! further states that Yahoo! Japan operates under various agreements with Yahoo! that give Yahoo! significant power to direct the operations of Yahoo! Japan, including a licensing agreement that, among other things, sets minimum content specifications and subjects Yahoo! Japan to an international pricing policy designed by Yahoo! to allocate sales revenue involving more than one Yahoo! entity. Yahoo! argues that these facts demonstrate not only that Yahoo! controls Yahoo! Japan, but also that it is involved in the management and operations of Yahoo! Japan.

5. Section 3(b)(2) of the 1940 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, through majority-owned subsidiaries, or controlled companies conducting similar types of business. Yahoo! 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.

*4 6. In determining whether a company is primarily engaged in a non-investment company business under section 3(b)(2), the Commission considers: (a) the applicant'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.* Yahoo! states that since its inception in 1995, it has considered itself to be a company engaged in the Internet and new media business of developing and providing Internet-related products and services. Yahoo! represents that its business strategy has not changed since it outlined its business plan in its prospectus for the initial public offering of its securities in 1996. Yahoo! has used its revenue and raised capital to expand its operations into foreign countries, to expand its product and service lines and to acquire companies with complementary products or services.

b. *Public Representations of Policy.* Yahoo! states that it has never represented that it is involved in any business other than the Internet and new media business that develops and provides Internet-related products and services. Yahoo! asserts that it has consistently stated in its reports to stockholders, press releases and periodic reports filed with the Commission that it is an Internet and new media company. Yahoo! states that it emphasizes operating results and has never emphasized either its investment income or the possibility of significant appreciation from its Cash Management Investments or Strategic Investments as a material factor in its business or future growth.

c. *Activities of Officers and Directors.* Yahoo! states that its board of directors and its officers spend almost all of their time on Yahoo!'s Internet and new media business. The board of directors' activities with respect to Yahoo!'s Cash Management Investments is minimal, limited to its adoption of the Corporate Investment Policy and periodically receiving reports. Yahoo! also states that only two of its approximately 2,000 employees spend any time with respect to its Cash Management Investments, and those employees spend only approximately 20% of their time in this manner. Yahoo! states that the amount of time that the board of directors dedicates to the Strategic Investments is small relative to the amount of time dedicated to Yahoo!'s business activities.

d. *Nature of Assets.* Yahoo! states that as of December 31, 1999, exclusive of cash items and government securities, over 90% of Yahoo!'s total assets, on an unconsolidated basis, was attributable to direct non-investment security assets and Yahoo!'s interests in wholly- and majority-owned subsidiaries and Yahoo! Japan. As of December 31, 1999, Yahoo represents that less than 5% of its total assets (exclusive of cash items and government securities), on an unconsolidated basis, were attributable to Strategic Investments. Yahoo further represents that Cash Management Investments comprised less than 10% of its total assets, as of December 31, 1999.

*5 e. *Sources of Income.* Yahoo! states that for the year ended December 31, 1999, Yahoo!'s investment income comprised approximately 37% and its operating income comprised approximately 63% of Yahoo!'s gross income. Yahoo! further states that for the quarter ended March 31, 2000, Yahoo!'s investment income comprised approximately 44%, and operating income

comprised approximately 57% of Yahoo!'s gross income. Moreover, Yahoo! states that 70% of the approximately \$57 million of investment income it reported in the quarter ended March 31, 2000, resulted from the consolidation of certain joint venture operations following Yahoo!'s acquisitions of Geocities and broadcast.com, not from speculation in securities. Yahoo! notes that in the past its income from operations has fluctuated widely and Yahoo! has incurred substantial non-recurring costs in connection with acquisitions and product development. Yahoo! notes that the composition of its income, at times, is not representative of Yahoo!'s activities as an operating company. Yahoo! believes that the sources of its revenue are more representative of Yahoo!'s activities as an operating company. Yahoo states that as far back as 1996, Yahoo! generated 83% of its total revenue from sales of advertisements and 14% from investment income. For the year ended December 31, 1999, Yahoo states that it generated 94% of its total revenue from operating activities and the remaining 6% from investment income. Yahoo! expects that in the future the percentage of its total revenues derived from operating activities will ordinarily be over 90%.

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

Applicant's Conditions:

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

1. Yahoo! will continue to allocate and utilize its accumulated cash and Cash Management Investments for bona fide business purposes.
2. Yahoo! will refrain from investing or trading in securities for short-term speculative purposes.

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

Jonathan G. Katz
Secretary

Footnotes

- 1 Section 2(a)(9) of the Act defines "control" as the power to exercise a controlling influence over the management or policies of a company. That section creates a presumption that an owner of more than 25% of the outstanding voting securities of a company controls the company.
- 2 Rule 3a-1 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 and securities of majority-owned subsidiaries and companies primarily controlled by it.
- 3 *Tonopah Mining Company of Nevada*, 26 SEC 426, 427 (1947).

Release No. 24459 (S.E.C. Release No.), Release No. IC - 24459, 72 S.E.C. Docket 1097, 2000 WL 639501