

SECURITIES AND EXCHANGE COMMISSION

Investment Company Act Release No. 34049; File No. 812-15159

Snowflake, Inc.

October 9, 2020

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of application for an order under Section 3(b)(2) of the Investment Company Act of 1940 (“Act”).

Applicant: Snowflake, Inc. (“Snowflake”).

Summary of Application: Applicant 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 states that it is primarily engaged in the business of operating a cloud-based data platform.

Filing Dates: The application was filed on September 17, 2020 and amended on October 7, 2020.

Hearing or Notification of Hearing: An order granting the requested declaration will be issued unless the Commission orders a hearing. Interested persons may request a hearing by e-mailing the Commission’s Secretary at Secretary-Office@sec.gov and serving Applicant with a copy of the request by e-mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2020 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues

contested. Persons who wish to be notified of a hearing may request notification by e-mailing the Commission's Secretary at Secretarys-Office@sec.gov.

ADDRESSES: The Commission: Secretarys-Office@sec.gov. Applicant: 450 Concar Drive, San Mateo, California 94402

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or David J. Marcinkus, Branch Chief, at (202) 551-6825, (Division of Investment Management, Chief Counsel's Office).

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

Applicant's Representations:

1. Applicant is a Delaware corporation that, directly and through its wholly-owned subsidiaries,¹ provides a cloud-based data platform ("Platform") that enables customers to consolidate data to drive business insights, build data-driven applications and share data.

2. Applicant states that its business operations necessitate the Applicant to generate and maintain significant amounts of liquid capital. Applicant states that the cloud computing industry is a capital-intensive industry that requires it to have readily available capital for ongoing operations and expenditures. Applicant also states that it needs to maintain substantial liquid capital to fund research and development activities; address fluctuations in results of its operations;

¹ Applicant states that while its business operations are primarily conducted through the parent level entity, Snowflake also maintains wholly-owned subsidiaries that complement and advance its overall business model.

and pursue potential strategic transactions, including acquisition of businesses, new technologies, services and other assets and strategic investments that complement its business.

3. Applicant states that it seeks to preserve its capital and maintain liquidity, pending the use of such capital to support its business operations, by investing in cash items, government securities, as well as in short-term investment grade and liquid fixed income and money market instruments that earn competitive market returns and provide a low level of credit risk (“Capital Preservation Investments”). Applicant states that it does not invest in securities for short-term speculative purposes.

Applicant’s Legal Analysis:

1. Applicant 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 is not an investment company as defined in the Act.

2. Section 3(a)(1)(A) of the Act defines the term “investment company” to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(1)(C) of the Act further defines an investment company as an issuer that 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 (a) are not investment companies and (b) are not

relying on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Act.

3. Applicant states that it does not hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities. Applicant states, however, that it maintains a significant amount of intangible assets, such as internally-generated intellectual property, that may not appear on its balance sheet. In addition, Applicant states that it recently engaged in an initial public offering (“IPO”) but that proceeds from that offering has been deployed only on a limited basis. Applicant states that it intends to invest a significant portion of the IPO proceeds in Capital Preservation Investments. Applicant states that it also may make a limited investment in private companies consistent with its corporate strategy. Such investments are considered to be investment securities for purposes of Section 3(a)(1)(C) of the Act. Accordingly, Applicant states that while it currently does not meet the definition of investment company in Section 3(a)(1)(C) of the Act, it will likely meet that definition following its deployment of the proceeds from its IPO and will continue to do so over the long term.

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

5. In determining whether an issuer is “primarily engaged” in a non-investment company business under Section 3(b)(2) of the Act, the Commission considers the following

factors: (a) the company'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.²

6. Applicant submits that it satisfies the criteria for issuance of an order under Section 3(b)(2) of the Act because Applicant is primarily engaged in the business of operating its Platform and is not in the business of investing, reinvesting, owning, holding, or trading in securities.

a. Historical Development. Applicant states that it was incorporated in 2012 and first offered its Platform in 2014, with data warehousing as its core use. Applicant states that customer have also used the Platform for additional purposes, including data engineering, data lakes, data science, data applications and data exchange.

b. Public Representations of Policy. Applicant states that it has consistently represented publicly that it is engaged in the business of operating its Platform. Applicant represents that it has never held itself out, and does not now hold itself out, as an investment company within the meaning of the Act or as engaging in the business of investing, reinvesting, owning, holding, or trading in securities. Applicant's offering documents emphasize its operating results and do not emphasize either its investment income or the possibility of significant appreciation from its cash management investment strategies as a material factor in its business or future growth.

c. Activities of Officers and Directors. Applicant represents that its board of directors and executive officers devote substantially all of their time to overseeing Applicant's business of providing its platform to customers. Applicant's cash management activities are managed

² Tonopah Mining Company of Nevada, 26 SEC 426, 427 (1947).

internally by its Chief Financial Officer and externally by four investment managers, whose activities are supervised by the Chief Financial Officer. Applicant states that its Chief Financial Officer spends less than 1% of his time monitoring Applicant's cash balances and managing short-term investment securities in accordance with Applicant's investment policy. Further, Applicant states that no executive officer, other than the Chief Financial Officer, spends time monitoring the cash balances and managing short-term investment securities.

Applicant states that as of July 31, 2020, it had approximately 2,037 employees. Fewer than five employees spend time on matters related to the management of Applicant's investment securities.

d. Nature of Assets. Applicant states that as of July 31, 2020 Applicant's investment securities constituted approximately 20% of its total assets (excluding Government securities and cash items) on an unconsolidated basis.³ Furthermore, 100% of its investment securities consisted of Capital Preservation Investments. Applicant anticipates that once proceeds from the IPO are deployed, approximately 89% of its total assets (excluding Government securities and cash) will be in investment securities, substantially all of which will be in Capital Preservation Investments. In addition, Applicant states that it may also invest in private companies as part of its corporate strategy. However, Applicant states that it does not plan to invest more than 10% of its total unconsolidated assets (excluding Government securities and cash items) in investment securities that are not Capital Preservation Investments, including investments made as part of its corporate development strategy. Applicant states that it expects to continue investing in Capital

³ Applicant states that none of its subsidiaries holds investment securities.

Preservation Investments, as well as Government securities and cash items, to fund its current and future operations.

e. Sources of Income and Revenue. Applicant represents that since its inception it has had net operating losses. It does, however, derive income from its investment securities.

Applicant states that a review of its current sources of revenues provides a more accurate picture of its operating company status, particularly given the upward trend in recognizing substantially increased revenues based on the growth in its customers usage of the Platform. Applicant states that, for the fiscal year ended January 31, 2020, Applicant earned approximately \$252.2 million of product revenues, compared to \$95.7 million as of January 31, 2019. In contrast, Applicant earned \$10.8 million in net investment income in the fiscal year ending January 31, 2020 compared to \$ 8.4 million in net investment income in the prior fiscal year. All such income was derived from the Capital Preservation Investments, Government securities and Cash Items. Applicant states that if net investment income were compared to its total revenues it would account for approximately 4% of total revenues in the fiscal year ended January 31, 2020 and approximately 9% of total revenues for the prior fiscal year.

7. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets and its sources of revenue, as discussed in the application, demonstrate that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading securities. Applicant thus asserts that it satisfies the criteria for issuing an order under Section 3(b)(2) of the Act.

Applicant's Conditions:

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

1. Applicant will continue to allocate and use its accumulated cash and investment securities for bona fide business purposes; and

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

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

J. Matthew DeLesDernier
Assistant Secretary