

Energy Recovery, Inc.  
Form SC 13G/A  
February 16, 2018

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

SCHEDULE 13G/A

Under the Securities Exchange Act of 1934  
(Amendment No. 1)\*

Energy Recovery, Inc.

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(Name of Issuer)

Common Stock, \$0.001 par value

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(Title of Class of Securities)

29270J100

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(CUSIP Number)

February 14, 2018

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(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

Rule 13d-1(b)

Rule 13d-1(c)

Rule 13d-1(d)

\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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CUSIP No. 29270J100

NAMES OF REPORTING PERSONS

1

Sundt AS

CHECK THE APPROPRIATE BOX  
IF A MEMBER OF A GROUP (SEE  
INSTRUCTIONS)

2

(a)

(b)

SEC USE ONLY

3

CITIZENSHIP OR PLACE OF  
ORGANIZATION

4

Norway

SOLE VOTING POWER

5

0

NUMBER OF  
SHARES  
BENEFICIALLY  
OWNED BY  
EACH  
REPORTING  
PERSON WITH:

SHARED VOTING POWER

6

4,400,000

SOLE DISPOSITIVE POWER

7

0

SHARED DISPOSITIVE POWER

8

4,400,000

AGGREGATE AMOUNT  
BENEFICIALLY OWNED BY EACH  
REPORTING PERSON

9

4,400,000

CHECK IF THE AGGREGATE  
AMOUNT IN ROW (9) EXCLUDES  
CERTAIN SHARES (SEE  
INSTRUCTIONS)

10

11 PERCENT OF CLASS  
REPRESENTED BY AMOUNT IN  
ROW (9)

8.21%\*

12 TYPE OF REPORTING PERSON  
(SEE INSTRUCTIONS)

FI

\* Based on 53,592,430 shares of the Issuer's common stock outstanding as of September 30, 2017, as reported by the Issuer in its Quarterly Report on Form 10-Q for the period ended September 30, 2017, filed with the Securities and Exchange Commission on November 3, 2017.

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CGS Holdings AS

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SOLE VOTING POWER

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SOLE DISPOSITIVE POWER

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NAMES OF REPORTING PERSONS

1

Helene Sundt AS

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ORGANIZATION

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PERSON WITH:

SHARED VOTING POWER

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SOLE DISPOSITIVE POWER

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SHARED DISPOSITIVE POWER

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1

Christian Gruner Sundt

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CUSIP No. 29270J100

NAMES OF REPORTING PERSONS

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Leiv Askvig

CHECK THE APPROPRIATE BOX  
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CUSIP No. 29270J100

1 NAMES OF  
REPORTING  
PERSONS  
Jakob Asif Iqbal

2 CHECK THE  
APPROPRIATE  
BOX IF A  
MEMBER OF A  
GROUP (SEE  
INSTRUCTIONS)

4 CITIZENSHIP OR  
PLACE OF  
ORGANIZATION

Norway

NUMBER OF SOLE VOTING  
SHARES POWER  
BENEFICIALLY  
OWNED BY 5  
EACH  
REPORTING 0  
PERSON  
WITH:

6 SHARED  
VOTING  
POWER

4,400,000

7 SOLE  
DISPOSITIVE  
POWER

However, utilizing Section 3(b)(1) leaves open the possibility that, while Astrotech strongly believes that it falls within the exclusion set forth in Section 3(b)(1), the Commission, the courts, or another interested party might take a different view. Astrotech is therefore filing this application seeking 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 1940 Act.

(iii) Section 3(b)(2)  
Section 3(b)(2) of the 1940 Act permits the Commission to find, upon application of the issuer, that the issuer is primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities, either directly or through (A) majority-owned subsidiaries, or (B) controlled companies conducting similar types of business.

b. Applicability of Section 3(b)(2)

The Commission has listed the relevant criteria that it will use to determine whether an issuer is primarily engaged in a business other than that of investing in securities for purposes of Section 3(b)(2) of the 1940 Act<sup>5</sup>. The five relevant factors enumerated by the Commission are: (i) the issuer's historical development; (ii) its public representations of policy; (iii) the activity of its officers and directors; (iv) the nature of its present assets; and, (v) the sources of its present income. An examination of these factors clearly indicates that Astrotech is primarily engaged in a business other than investing, reinvesting, owning, holding, or trading in securities.

Notwithstanding its entire operating history and current publicly stated objectives, as well as the determination of its Board of Directors that Astrotech is not, and will not operate as, an "investment company", the Applicant may nevertheless be considered an investment company within the meaning of Section 3(a)(1)(C) for the reasons described above.

Out of an abundance of caution and concern, the Applicant is requesting a Section 3(b)(2) order to resolve any legal uncertainties regarding the applicability of the 1940 Act to

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<sup>5</sup> See Certain Prima Facie Investment Companies, Investment Company Act Release No. IC-10937 (Nov. 13, 1979); In the Matter of the Tonopah Mining Company of Nevada, 26 SEC 426 (1947).

the Applicant. In addition, Astrotech believes that the issuance of the order under Section 3(b)(2) would be in the public interest and consistent with the protection of investors and the purposes of the 1940 Act.

(i) Historical Development

As noted above, Astrotech is an innovative science and technology development and commercialization company that invents, acquires, and commercializes technological innovations sourced from internal research, universities, laboratories, and research institutions, and then funds, manages, and builds start-up companies for profitable divestiture to market leaders to maximize shareholder value. In contrast to investment companies, Astrotech's management is an integral part of the team of each of the start-up companies and actively manages the day-to-day operations of all aspects of its companies. Throughout its history since its founding in 1984 and up to the sale of its ASO business, Astrotech was primarily a commercial aerospace company. Since the sale of its ASO business, its focus has remained on developing new technologies, but such activities have expanded beyond just the space industry. However, it has supported the launch of 23 shuttle missions and more than 300 spacecraft. It has designed and built space hardware and processing facilities. This rich heritage formed the foundation for both 1st Detect and AstroGenetix, as both companies were conceived through Astrotech's involvement in the commercial aerospace business. With the acquisition of Astral Images, however, Astrotech has begun to expand its reach beyond the space industry.

(ii) Public Representations of Policy

Astrotech continues to hold itself out as an innovative science and technology development and commercialization company that invents, acquires, and commercializes technological innovations sourced from internal research, universities, laboratories, and research institutions, and then funds, manages, and builds start-up companies for profitable divestiture to market leaders to maximize shareholder value. Unlike investment companies, Astrotech's management is an integral and critical part of the management team of each of the start-up companies and actively manages the day-to-day operations of all aspects of its companies. While Astrotech's mission changed slightly following the sale of ASO and the subsequent acquisition of Astral, Astrotech has never portrayed itself as anything other than an operating company with complementary research and development activities. In Astrotech's annual 10-K and quarterly 10-Q filings with the Commission, Astrotech has consistently stated that its objective is to develop and commercialize technology. A copy of its most recent 10K is attached as an Exhibit. Similarly, a perusal of its web page at <http://www.astrotechcorp.com/> and the websites of 1st Detect, Astral Images and AstroGenetix at <http://1stdetect.com>, <http://astral-images.com/> and <http://astrogenetix.com/> illustrate a clear and unwavering focus on commercialization activities and the development of new and innovative technologies. Through public statements, reports to shareholders, periodic filings with the Commission, public advertising and information contained on Astrotech's, 1st Detect's, Astral Images's and AstroGenetix's websites, Astrotech has invariably represented that it is primarily engaged in the business of commercialization activities and related research



and development activities. At a conference for investors in May 2016, Astrotech presented itself to the investment community as a research and development and commercialization company (a copy of this presentation may be found at <http://www.astrotechcorp.com/presentations>). In none of its marketing materials, websites, public filings, or investor presentations does Astrotech discuss or highlight its investment securities except as required to comply with federal securities laws. Astrotech has always emphasized its 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.

(iii) Activities of Officers and Directors

The Board of Directors and executive officers of Astrotech are primarily engaged in managing Astrotech's businesses. As indicated under "Management of Astrotech" above, many members of the Board of Directors have expertise in technology and other areas of expertise relevant to Astrotech's businesses. Astrotech's executive officers have extensive experience in technology development and commercialization. The Board of Directors and senior executive officers leverage their expertise to improve Astrotech's infrastructure, business operations, and services. Astrotech's directors spend substantially all of their time relating to Astrotech matters overseeing Astrotech's businesses. Astrotech's senior executive officers spend substantially all of their time operating and managing Astrotech's businesses and seeking strategic transactions that complement Astrotech's existing businesses. Treasury functions related to the assets of Astrotech including the managing and the holding of cash, cash equivalents and Capital Preservation Investments are handled by the Chief Financial Officer of Astrotech with assistance from a third party investment advisor, who is primarily responsible for managing the portfolio and recommending investment options. The CFO and the Director of Corporate Development of Astrotech spend less than 1% and 3% of their time, respectively, working with the investment advisor on managing cash, cash equivalents and Capital Preservation Investments at Astrotech. Officers and members of the Board of Directors other than the CFO and the Director of Corporate Development spend less than 3% of their time addressing such matters. Neither the Directors nor the officers otherwise dedicate any time to investing, reinvesting, owning, holding or trading in third-party investment securities.

(iv) Nature of Assets

Section 3(b)(2) of the 1940 Act provides that the Commission may find an issuer to be engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities either directly or through majority-owned subsidiaries or through controlled companies conducting similar types of business.

As of December 31, 2016, Astrotech's investment securities (as defined in Section 3(a)(2) of the 1940 Act) of approximately \$14.4 million constituted approximately 96% of Astrotech's total unconsolidated assets (excluding Government securities and cash items). As of December 31, 2016, less than \$1 or 0.0% of Astrotech's investment securities



was cash and none of its Capital Preservation Investments consisted of money market funds. As of December 31, 2016, 100% of Astrotech's investment securities consist of Capital Preservation Investments. While Astrotech's investment securities are a large percentage of its total assets, the amount of investment securities held by Astrotech is relatively small in comparison to other applicants seeking relief under Section 3(b)(2) because Astrotech is a small but growing company that requires capital in order to continue to fund its technology development and commercialization activities. None of Astrotech's wholly-owned subsidiaries or majority-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 1940 Act..

The following tables set forth the value of the investment securities of the Applicant grouped into these categories and the percentage of the value of the total unconsolidated assets of the Applicant represented by such assets as of June 30, 2016 and December 31, 2016.

Astrotech<sup>6</sup>

Statement of Investment Securities as of June 30, 2016

(in thousands)

	Carrying Value	Percentage
Mutual Funds	\$12,807	60%
Investment Grade Fixed Income Securities	\$3,513	17%
Time Deposits – CDs	\$4,990	23%

Astrotech

Statement of Investment Securities as of December 31 2016

(in thousands)

	Carrying Value	Percentage
Mutual Funds	\$9,025	62%
Investment Grade Fixed Income Securities	\$3,404	24%
Time Deposits – CDs	\$2,000	14%

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<sup>6</sup> For a Statement of Assets on a consolidated basis for Astrotech, see its most recent Form 10K which is attached as an exhibit hereto

Astrotech  
Summary of Operations  
(in thousands)

NET REVENUE:	Thru Q2 2017	2016	2015
Grant Revenue	464	182	77
Scanning Revenue	-	1	12
Handrails Revenue	-12	157	-
Total Net Revenue	476	340	89
EXPENSES			
Operating Expenses			
Selling, General & Administrative	,3,229	7,157	7,938
Research & Development	,2,547	6,469	3,234
Equity Compensation	953	551	5,028
Total Operating Expenses	6,729	14,177	16,200
Other Income (Expense)			
Interest and Invest. Income	133	379	224
Income from Discontinued Ops*	-	-	20,601
Other Income (Expense)	133	379	20,825
* ASO Transaction			
NET INCOME (LOSS)			
Income Tax Expense (Benefit)	0	(25)	(5,941)
Net Income (Loss)	(6,121)	(13,434)	10,655
Minority Interest	103	339	123
NET INCOME (LOSS) ATTRIBUTABLE TO ASTC	(6,018)	(13,095)	10,778

Astrotech notes that for the quarter ended December 31, 2016, it had a year to date net loss of \$6.0 million, of which net investment income was \$0.13 million. Astrotech further notes that for the year ended June 30, 2016, it had a net loss of \$13.4 million, of which net investment income was \$0.38 million. Finally, Astrotech notes that its net investment income was 12% and 8% of its total income for fiscal year ended June 30, 2016 and quarter ended December 31, 2016, respectively. In the future, Astrotech expects substantially all of its income to come from operations. Astrotech believes that since substantially all of its income is attributable to its operations, rather than investments, Astrotech's income supports a determination that Astrotech is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

Additionally, a portion of Astrotech's consolidated assets consist of intangible assets such as internally-developed intellectual property that are not included in the value of Astrotech's total consolidated and unconsolidated assets for purposes of determining Astrotech's status under the 1940 Act. The value of Astrotech's internally-developed intellectual property is 7.2% of total assets as of December 31, 2016 on a consolidated basis. This value has been determined in accordance with Financial Accounting Standards Board guidance (specifically Intangibles—Goodwill and Other (Topic 350)) in consultation with Astrotech's outside auditors. Accordingly, while the market recognizes the value of these intangible assets, they are not recognized as an asset for purposes of the 1940 Act. As a result, Astrotech also believes that the asset tests used in connection with Sections 3(a)(1)(C), 3(b)(1) and 3(b)(2) of the 1940 Act and Rule 3a-1 thereunder may significantly overstate the relative value of investment securities.

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 Section 3(a)(1)(C) of the 1940 Act or Rule 3a-1 thereunder than companies, such as Astrotech, with internally-developed intellectual property. This asset-skewing has the effect of penalizing a company such as Astrotech by constraining its cash management activities without similarly constraining the cash management activities of a company with acquired intellectual property that engages in a similar business. If granted an order under Section 3(b)(2), Astrotech anticipates that, as is currently the case, in the future its investments in "investment securities" that are not Capital Preservation Investments will be no more than 10 percent of Astrotech's total assets (other than Government securities and cash items) on an unconsolidated basis.

(v) Sources of Income

The Applicant derives predominantly all of its income from its core operating businesses. As of the year ended June 30, 2016 and quarter ended December 31, 2016, it derived approximately 12% and 8% of its total income from investment income. The fluctuations in the percentage of investment income as a percentage of total income is due to Astrotech's continued use of their Capital Preservation Investments to fund on-going operations resulting in less dollars being maintained in the investment securities portfolio. Given Astrotech's early stage companies the percentage of total income from investment income can significantly vary from time period to time period. Applicant states that it may increase its Capital Preservation Investments, as well as the ratio of income from these investments to total income, if it conducts capital raising transactions or financings in the future although it has no current intention of doing so. In the future, Astrotech expects substantially all of its income to come from operations. Since predominantly all of Astrotech's income is attributable to its operations, rather than investments, Astrotech's income supports a determination that Astrotech is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.



Additionally, all of Astrotech's cash management investments are either in Government securities, cash, money market funds, or Capital Preservation Investments which are collectively designed to preserve Astrotech's cash and maintain liquidity. Astrotech's Capital Preservation Investments are currently limited to certificates of deposits, investment grade fixed income instruments, and high quality fixed income mutual funds. Astrotech does not engage in short-term speculative trading. Further, it does not actively trade its Capital Preservation Investments. Such Capital Preservation Investments are liquidated when cash is required for research and development activities, strategic transactions, or other business operating requirements. However, these Capital Preservation Investments would never be liquidated for short-term speculative gain.

Accordingly, Applicant submits that the sources of revenue, by themselves, fully support the conclusion that Astrotech is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

An Order under Section 3(b)(2) Would Better Serve the Public Policies c. Underlying the 1940 Act and Avoid Harm to Astrotech's Existing Shareholders

If the Commission declines to grant the relief requested in this Application, Astrotech would be faced with two courses of action: (1) manage the investment of its liquid capital in Capital Preservation Investments under the constraints imposed by Section 3(a)(1)(C); or, (2) comply with the registration and regulatory requirements of the 1940 Act. Either alternative would be a disadvantage to Astrotech's shareholders without serving any of the public policies underlying the 1940 Act.

(i) Management of Investments In Compliance With Section 3(a)(1)(C)

Astrotech's management of its liquid capital in Capital Preservation Investments under the constraints of Section 3(a)(1)(C) will adversely affect Astrotech's ability to fund its organic growth, and impede its research and development and commercialization activities. Astrotech's experience is that net after tax yield on Government securities is significantly less than the average return available on other high quality fixed income instruments. Such lower returns would be wasteful of corporate assets and not in the best interest of Astrotech's shareholders especially for a small but growing company such as Astrotech.

(ii) Registration under the 1940 Act

Registration and compliance with the 1940 Act and the rules and regulations thereunder would advance no clear public purpose and potentially entail greater costs and harm to Astrotech and its shareholders. Additionally, while the investment securities held by Astrotech are a significant portion of its total assets, the actual dollar amount of investment securities held by Astrotech is relatively small. Even if registration as an investment company were feasible for a company like Astrotech, its portfolio of investment securities would make it a very small registered investment company with limited appeal to mutual fund investors



because of the advantages of economies of scale inherent in the mutual fund industry. The small dollar amount of investment securities owned by Astrotech is due to being a small company focused on technology and development and commercialization activities. Accordingly, registration as an investment company would be wasteful and time consuming for Astrotech without promoting any of the public policies underpinning the 1940 Act given the small dollar amount of its investment securities portfolio.

**A. No Meaningful Protection to Shareholders**

Astrotech is already subject to the reporting requirements under the Securities Exchange Act of 1934, as amended. As a result, shareholders of, and potential investors in, Astrotech have regular access to current information concerning Astrotech's operations. Accordingly, requiring Astrotech to register under the 1940 Act would not materially improve the nature, quality, or quantity of the information about Astrotech currently 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 Astrotech and prescribed by GAAP. Investment company financial statements report assets at their current fair market values. Astrotech would incur costly changes in its financial reporting if it were required to register under the 1940 Act. The required changes to Astrotech'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 Astrotech were required to file financial reports under the 1940 Act, its directors would be required to evaluate substantial quantities of tangible and intangible assets on a quarterly or semiannual basis and 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 Astrotech's shareholders. In addition, preparation of unconsolidated financial information in accordance with investment company practice would make Astrotech's financial information incompatible with other entities within the industry.

**C. Expensive and Cumbersome Regulation**

To require Astrotech, a company not primarily in the business of investing in securities, to comply with the regulatory provisions of the 1940 Act would be expensive, cumbersome and contrary to the best interests of its shareholders – who invested in Astrotech as an innovative company devoted to technology development and commercialization and not as an investment company. Assuming that Astrotech were able to comply with the 1940 Act, it would need to devote considerable financial, administrative and legal resources to the preparation of registration statements that meet the requirements of the 1940 Act, and to the creation of internal administrative mechanisms that comply with the significant additional recordkeeping and reporting requirements of the 1940 Act. This would create a significant burden on Astrotech's limited financial and personnel resources, which would in turn have a negative impact on its management and profitability. This



requirement also would significantly detract from Astrotech's efforts toward exploiting, developing and commercializing new technologies -- technologies that could help promote important societal goals such as medical advances, food safety, and national defense.

D. Significant Change in Astrotech's Business

Astrotech's compliance with the 1940 Act's regulatory scheme would certainly cause material and significant changes in its operating strategies. Astrotech would be restricted as to all future borrowings by the asset-coverage requirements in Section 18(a) of the 1940 Act. Additionally, Sections 17 and 18 would 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 these groups. Especially among technology companies such as Astrotech, stock options are an effective form of incentive and means for aligning employees' interests with those of shareholders in general. Astrotech 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 significant changes on Astrotech's business strategy would materially change the character of Astrotech in ways its shareholders never contemplated when making their investments -- causing considerable harm to its shareholders. Astrotech's shareholders would no longer own interests in an innovative technology development and commercialization company, but instead in a company forced to operate like an investment company. Moreover, as demonstrated above, Astrotech would experience substantially higher costs in complying with the 1940 Act and would experience material disruption of its existing business.

d. Relevant Precedents

(i) RealNetworks, Inc.<sup>7</sup>

On June 28, 2007, the Commission granted an order pursuant to Section 3(b)(2) to RealNetworks, Inc. ("RealNetworks"), based on facts and circumstances substantially similar to those of Astrotech.

At the time of its application to the Commission, RealNetworks was also a developer of innovative new technology but in the digital media services and digital distribution industry. Like Astrotech, RealNetworks invested in Capital Preservation Investments for the purpose of maintaining substantial liquid capital to fund operations, research and development, and potential strategic acquisitions. Similarly to Astrotech, RealNetworks also had a significant portion of its assets consisting of intangible assets, such as intellectual property, which, with limited exceptions, did not appear on its balance sheet

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<sup>7</sup> See RealNetworks, Inc., Notice of Application under Section 3(b)(2) of the 1940 Act, File No. 812-13399 (June 28, 2007).

and were not included in the value of RealNetworks' total assets for purposes of determining its status under the 1940 Act. As with Astrotech, RealNetworks believed that the asset tests used in connection with Sections 3(a)(1)(C) of the 1940 Act therefore significantly understated the relative value of RealNetworks non-investment security assets.

The Commission granted RealNetworks request for an order because, like Astrotech, RealNetworks was engaged in operating an innovative technology company and was not primarily engaged in the business of investing, reinvesting, or trading in securities.

(ii) Applied Materials, Inc.

On September 13, 2005, the Commission granted an order under Section 3(b)(2) of the 1940 Act to Applied Materials, Inc. ("AMI") based on facts and circumstances similar to those of Astrotech.<sup>8</sup>

At the time of its application AMI was also engaged in developing innovative new technologies but in the global semiconductor industry. Approximately 48% of AMI's total assets (excluding cash and Government securities) consisted of "investment securities" as defined under the 1940 Act. More than 99% of AMI's investment securities consisted of Capital Preservation Investments.

Additionally, as with Astrotech, a significant portion of AMI's assets consisted of intangible assets such as internally-developed intellectual property that were not included in the value of AMI's total assets for purposes of determining AMI's status under the 1940 Act. AMI, like Astrotech, also required substantial liquid capital to fund its operations, continue its research and development activities, and fund potential acquisitions to complement its existing business line.

The Commission granted AMI's request for an order because, like Astrotech, AMI was engaged in operating an innovative technology company and was not primarily engaged in the business of investing, reinvesting, or trading in securities.

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<sup>8</sup> See Applied Materials, Inc., Notice of Application under Section 3(b)(2) of the 1940 Act, File No. 812-126868 (Sept. 13, 2005).

(iii) Other Relevant Precedents

The Commission has granted 3(b)(2) relief in several other situations with parallels to Astrotech such as Dolby Laboratories, Inc.<sup>9</sup>, Hutchinson Technology Incorporated<sup>10</sup> and Corvis Corporation<sup>11</sup>. The foregoing review of the relevant precedents demonstrates that Astrotech's situation can be compared favorably to many instances in which the Commission granted orders under Section 3(b)(2). Astrotech therefore respectfully requests to benefit from the same relief.

V. PROCEDURAL MATTERS

Pursuant to Rule 0-2(f) under the 1940 Act, the Applicant states the following:

Applicant Address:

Astrotech Corporation  
201 W. 5th Street  
Suite 1275  
Austin, Texas 78701

Please direct questions to:

Sylvie Durham, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, New York 10166  
Telephone: (212) 801-2222  
E-mail: durhams@gtlaw.com

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<sup>9</sup> See Dolby Laboratories, Inc., Notice of Application under Section 3(b)(2) of the 1940 Act, File No. 812-13582 (October 1, 2010). Dolby is a leading technology company that needs to maintain liquid capital for its capital intensive business and for potential acquisitions. Additionally, it has intangible assets that could not be counted on its balance sheet under GAAP. It maintained highly liquid investment securities, consisting of Capital Preservation Investments, equal to 39.2% of its total assets on a consolidated basis.

<sup>10</sup> See Hutchinson Technology Incorporated, Notice of Application under Section 3(b)(2) of the 1940 Act, File No. 812-13008 (January 25, 2006). HTI was a leading manufacturer of hard disc drives and needed to maintain substantial liquid capital to fund its operations, research and development activities and capital expenditures. Investment securities comprised approximately 15.8% of its total assets and reinvestment income was between 9.5% and 35.8% of its total net income after taxes. It also invested solely in Capital Preservation Investments.

<sup>11</sup> See Corvis Corporation, Notice of Application under Section 3(b)(2) of the 1940 Act, File No. 812-12598 (October 21, 2002). Corvis was a manufacturer of high performance optical networking products. Corvis needed to maintain highly liquid capital for research and development activities and to fund its existing businesses. Corvis also invested its cash mainly in Capital Preservation Investments and such Investments comprised 82% of its total assets.



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**VI. REQUEST FOR ORDER**

On the basis of the foregoing, the Applicant submits that it qualifies for an order under Section 3(b)(2) of the 1940 Act, and respectfully requests that the Commission enter an order pursuant to Section 3(b)(2) of the 1940 Act declaring that the Applicant is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities.

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In Witness Whereof, Astrotech Corporation has caused this Amendment No. 2 to the application to be duly executed this 9th day of March, 2017.

ASTROTECH CORPORATION

/s/ Eric Stober

By: Name: Eric Stober

Title: Chief Financial Officer

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VII. VERIFICATION OF APPLICATION AND STATEMENT OF FACT

In accordance with Rule 0-2(d) under the 1940 Act, the undersigned, states that he has duly executed the attached Application for an Order, dated March 9, 2017, for and on behalf of Astrotech Corporation; that he is the Chief Financial Officer of Astrotech Corporation; 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/ Eric Stober

Name: Eric Stober  
Title: Secretary

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INDEX OF EXHIBITS

1. Certificate of Secretary of Astrotech Corporation.
2. Astrotech Corporation Form 10K dated June 30, 2016.

Exhibit Index

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