UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

DIVISION OF
CORPORATION FINANCE

March 8, 2012

Martin P. Dunn
O'Melveny & Myers LLP
mdunn@omm.com

Re: Yahoo! Inc.
Incoming letter dated February 10, 2012

Dear Mr. Dunn:

This is in response to your letters dated February 10, 2012 and March 5, 2012 concerning the shareholder proposal submitted to Yahoo! by John Chevedden. We also have received a letter from the proponent dated February 23, 2012. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Ted Yu
Senior Special Counsel

Enclosure

cc: John Chevedden
FISMA & OMB Memorandum M-07-16

March 8, 2012

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Yahoo! Inc.
Incoming letter dated February 10, 2012

The proposal asks the board to take the steps necessary unilaterally (to the fullest extent permitted by law) to amend the bylaws and each appropriate governing document to enable one or more holders of not less than one-tenth of the company's voting power (or the lowest percentage of outstanding common stock permitted by state law) to call a special meeting.

There appears to be some basis for your view that Yahoo! may exclude the proposal under rule 14a-8(i)(3), as vague and indefinite. We note in particular your view that, in applying this particular proposal to Yahoo!, neither shareholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. Accordingly, we will not recommend enforcement action to the Commission if Yahoo! omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3).

Sincerely,

Angie Kim
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

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1934 Act/Rule 14a-8

March 5, 2012

VIA E-MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Yahoo! Inc.
Shareholder Proposal of John Chevedden
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

This letter concerns the request dated February 10, 2012 (the ***"Initial Request Letter"***) that we submitted on behalf of Yahoo! Inc., a Delaware corporation (the ***"Company"***), seeking confirmation that the staff (the ***"Staff"***) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the ***"Commission"***) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, the Company omits the shareholder proposal (the ***"Proposal"***) and supporting statement (the ***"Supporting Statement"***) submitted by John Chevedden (the ***"Proponent"***) from the Company's proxy materials for its 2012 Annual Meeting of Shareholders (the ***"2012 Proxy Materials"***). The Proponent submitted a letter to the Staff dated February 23, 2012 (the ***"Proponent Letter"***), asserting the view that the Proposal and Supporting Statement should be included in the 2012 Proxy Materials.

We submit this letter on behalf of the Company to supplement the Initial Request Letter and respond to the offer to modify the Proposal made in the Proponent Letter, which is attached hereto as Exhibit A. The Initial Request Letter is not attached hereto, but is available on the Commission's website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2012/johnchevedden021012-14a8-incoming.pdf. The Company renews its request for confirmation that the Staff will not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2012 Proxy Materials in reliance on Rule 14a-8.

I. BACKGROUND

On December 30, 2011, the Company received a letter from the Proponent containing the Proposal, which seeks amendment of the Company's bylaws to "enable one or more shareholders, holding not less than one-tenth [(or the lowest percentage of our outstanding common stock permitted by state law)] of the voting power of the [Company], to call a special meeting." In the Initial Request Letter, the Company requested no-action relief in reliance on Rule 14a-8(i)(3), as the Proposal and the Supporting Statement are so inherently vague or indefinite that neither the shareholders in voting on the Proposal, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty the actions required by the Proposal.

The Proponent Letter offers to "make whatever modifications are deemed necessary to resolve" the issues with the language of the Proposal described in the Initial Request Letter, "should it be deemed necessary to do so."

II. REVISION OF THE PROPOSAL IS NOT APPROPRIATE

The Proponent Letter offers to "make whatever modifications are deemed necessary to resolve" the issues with the language of the Proposal described in the Initial Request Letter, "should it be deemed necessary to do so." The Proponent Letter notes that Staff Legal Bulletin No. 14B (September 15, 2004) (***"SLB 14B"***) provides for the modification of the language of a proposal. Notably, the Proponent Letter offers no suggestions as to what "modifications" to the Proposal might resolve the concerns noted in the Initial Request Letter and, other than its reference to SLB 14B, offers no support that modification of the Proposal would be appropriate in this circumstance.

In this regard, Section B.2 of SLB 14B states:

> "[T]here is no provision in rule 14a-8 that allows a shareholder to revise his or her proposal and supporting statement. We have had, however, a long-standing practice of issuing no-action responses that permit shareholders to make revisions that are minor in nature and do not alter the substance of the proposal. We adopted this practice to deal with proposals that comply generally with the substantive requirements of [R]ule 14a-8, but contain some minor defects that could be corrected easily. Our intent to limit this practice to minor defects was evidenced by our statement in [Staff Legal Bulletin No 14 (July 13, 2001)] that we may find it appropriate for companies to exclude the entire proposal, supporting statement, or both as materially false or misleading if a proposal or supporting statement would require detailed and extensive editing in order to bring it into compliance with the proxy rules."

It is the Company's view that the Proposal does not "comply generally with the substantive requirements of Rule 14a-8" because there are multiple phrases in the text of the Proposal that render the Proposal impermissibly vague and indefinite, such that neither shareholders in voting on the Proposal nor the Company in implementing it will know with any certainty what actions

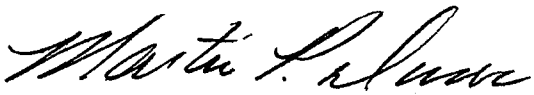
are called for by the Proposal. Any modifications to the Proposal to resolve these ambiguous phrases would necessarily "alter the substance of the [P]roposal." For example, the Proponent specifically revised the language of this Proposal (to include the phrase "the lowest percentage of our outstanding common stock permitted by state law") to be different from the language used in numerous prior proposals submitted to other companies on this same topic. *See, e.g.*, *Marathon Oil Corp.* (December 23, 2010) and *Gilead Sciences, Inc.* (January 4, 2011) (both containing the phrase "or the lowest percentage allowed by state law above 10%"); *see also*, proposals included in the proxy materials for the 2011 annual meetings of shareholders of Goldman Sachs Group, Inc. (page 42) and NYSE-Euronext (page 70) (same). This revision is not a minor defect, such as a typographical error, but an intentional revision to the Proposal that materially changes the actions called for by the Proposal as compared to the actions called for by numerous prior proposals on this topic. Therefore, allowing the Proponent to revise this language to conform to prior proposals on this topic would "alter the substance of the [P]roposal." For the reasons discussed above, and supported by the policy considerations set forth in SLB 14B and the Staff's views recently expressed in *R.R. Donnelley & Sons Company* (March 1, 2012) (concurring with the exclusion of a proposal identical to the Proposal in reliance on Rule 14a-8(i)(3)), the Proponent should not be afforded the opportunity to revise his Proposal as requested in the Proponent Letter.

The Company continues to believe that it may properly exclude the Proposal and Supporting Statement from its 2012 Proxy Materials in reliance on Rule 14a-8(i)(3).

III. CONCLUSION

For the reasons discussed above and in the Initial Request Letter, the Company believes that it may properly omit the Proposal from its 2012 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company excludes the Proposal and the Supporting Statement from its 2012 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 383-5418.

Sincerely,



Martin P. Dunn
of O'Melveny & Myers LLP

Attachments

cc: Mr. John Chevedden

Michael J. Callahan, Esq.
Christina Lai, Esq.
Yahoo! Inc.

EXHIBIT A

JOHN CHEVEDDEN

FISMA & OMB Memorandum M-07-16

FISMA & OMB Memorandum M-07-16

February 23, 2012

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

 # 1 Rule 14a-8 Proposal
Yahoo! Inc. (YHOO)
Special Meeting
John Chevedden

Ladies and Gentlemen:

This responds to the February 10, 2012 company request to avoid this established rule 14a-8 proposal.

Staff Legal Bulletin 14B (September 15, 2004) provides for modification of the language of a rule 14a-8 Proposal – not merely its exclusion. The proponent is prepared to make whatever modifications are deemed necessary to resolve this matter, should it be deemed necessary to do so.

This is to request that the Office of Chief Counsel allow this highly-supported resolution topic to be voted upon in the 2012 proxy.

Sincerely,

John Chevedden

cc: Stephen Carlson <carlsst@yahoo-inc.com>

JOHN CHEVEDDEN

FISMA & OMB Memorandum M-07-16

FISMA & OMB Memorandum M-07-16

February 23, 2012

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

 # 1 Rule 14a-8 Proposal
Yahoo! Inc. (YHOO)
Special Meeting
John Chevedden

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Staff Legal Bulletin 14B (September 15, 2004) provides for modification of the language of a rule 14a-8 Proposal – not merely its exclusion. The proponent is prepared to make whatever modifications are deemed necessary to resolve this matter, should it be deemed necessary to do so.

This is to request that the Office of Chief Counsel allow this highly-supported resolution topic to be voted upon in the 2012 proxy.

Sincerely,

John Chevedden

cc: Stephen Carlson <carlsst@yahoo-inc.com>

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1934 Act/Rule 14a-8

February 10, 2012

VIA E-MAIL (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Yahoo! Inc.
Shareholder Proposal of John Chevedden
Securities Exchange Act of 1934 Rule 14a-8

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client Yahoo! Inc., a Delaware corporation (the ***"Company"***), which requests confirmation that the staff (the ***"Staff"***) of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the ***"Commission"***) will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934 (the ***"Exchange Act"***), the Company excludes the enclosed shareholder proposal (the ***"Proposal"***) and supporting statement (the ***"Supporting Statement"***) submitted by John Chevedden (the ***"Proponent"***) from the Company's proxy materials for its 2012 Annual Meeting of Shareholders (the "***2012 Proxy Materials***").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2012 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

A copy of the Proposal, the cover letter submitting the Proposal and correspondence regarding the Proposal are attached hereto as Exhibit A.[1]

Pursuant to the guidance provided in Section F of *Staff Legal Bulletin No. 14F* (October 18, 2011), we ask that the Staff provide its response to this request to Martin Dunn, on behalf of the Company, at mdunn@omm.com, and to the Proponent, at ***FISMA & OMB Memorandum M-07-16***

I. SUMMARY OF THE PROPOSAL

On December 30, 2011, the Company received a letter from the Proponent containing the following Proposal for inclusion in the Company's 2012 proxy statement:

> "Resolved, Shareholders ask our board to take the steps necessary unilaterally (to the fullest extent permitted by law) to amend our bylaws and each appropriate governing document to enable one or more shareholders, holding not less than one-tenth* of the voting power of the Corporation, to call a special meeting. This application would include during non-emergency circumstances. *Or the lowest percentage of our outstanding common stock permitted by state law.
>
> This includes that such bylaw and/or charter text will not have any exclusionary or prohibitive language in regard to calling a special meeting that apply only to shareowners but not to management and/or the board (to the fullest extent permitted by law). This proposal does not impact our board's current power to call a special meeting."

The Supporting Statement notes the opportunity for "additional improvement in our [C]ompany's 2011 reported corporate governance," and the Proponent's belief that adoption of the proposal will "initiate improved corporate governance" and make the Company "more competitive."

II. EXCLUSION OF THE PROPOSAL

A. Basis For Exclusion Of The Proposal

As discussed more fully below, the Company believes that it may properly exclude the Proposal from its 2012 Proxy Materials in reliance on Rule 14a-8(i)(3), as the Proposal is impermissibly vague and indefinite so as to be materially false and misleading.

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[1] We note that copies of both Rule 14a-8 and *Staff Legal Bulletin No. 14F* were included with the notice of deficiency required by Rules 14a-8(b) and (f) from the Company. Because no procedural basis for exclusion under Rule 14a-8(b) is asserted in this request, such copies are not included in Exhibit A.

B. The Proposal May Be Excluded In Reliance On Rule 14a-8(i)(3), As It Is So Inherently Vague And Indefinite That Neither Shareholders In Voting On It, Nor The Company In Implementing It, Would Be Able To Determine With Any Reasonable Certainty Exactly What Actions Are Required

Rule 14a-8(i)(3) permits a company to exclude a proposal or supporting statement, or portions thereof, that are contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false and misleading statements in proxy materials. Pursuant to *Staff Legal Bulletin No. 14B* (September 15, 2004), reliance on Rule 14a-8(i)(3) to exclude a proposal or portions of a supporting statement may be appropriate in only a few limited instances, one of which is when the language of the proposal or the supporting statement render the proposal so vague or indefinite that neither the shareholders in voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires. *See also Philadelphia Electric Company* (July 30, 1992).

In applying the "inherently vague or indefinite" standard under Rule 14a-8(i)(3), the Staff has long held the view that a proposal does not have to specify the exact manner in which it should be implemented, but that discretion as to implementation and interpretation of the terms of a proposal may be left to the company's board. However, the Staff also has noted that a proposal may be materially misleading as vague and indefinite where "any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal." *See Fuqua Industries, Inc.* (March 12, 1991).

For the reasons described below, the Company believes that the language and intent of the Proposal and the Supporting Statement are so inherently vague or indefinite that neither the shareholders in voting on the Proposal, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty the actions required by the Proposal.

1. The Proposal is impermissibly vague and indefinite regarding the percentage of stock ownership required for a shareholder to have the ability to call a special meeting

The Proposal urges the Board to unilaterally amend the bylaws of the Company to give the power to call a special meeting to shareholders holding "not less than one-tenth of the voting power of the Corporation." The Proposal then qualifies this one-tenth standard with the modifier "or the lowest percentage of our outstanding common stock permitted by state law." The Company is incorporated under Delaware law. Unlike the laws applicable to companies incorporated in a majority of the states in the United Stated[2], the Delaware General Corporation

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[2] According to the law review article "Challenging Delaware's Desirability as a Haven For Incorporation," by Philip S. Garon, Michael A. Stanchfield, and John H. Matheson (January 14, 2006), the corporate statutes of most states "give shareholders holding a specified percentage of shares the power to call a

Law (***"DGCL"***) does not specify a minimum percentage of stock ownership for shareholders to be able to call a special meeting of shareholders. Instead, Section 211(d) of the DGCL states that a special meeting of shareholders "may be called by the board of directors or by such person or persons as may be authorized by the certificate of incorporation or by the bylaws." Consistent with this provision of the DGCL, the Company provides for special meetings in Section 2.3 of its Amended and Restated Bylaws[3] (the ***"Bylaws"***), which permits a special meeting to be called by the board of directors, the chairman of the board, or the chief executive officer. Neither the Company's Bylaws nor the DGCL identify a minimum percentage threshold level of stock ownership required for a shareholder or group of shareholders to be eligible to call a special meeting. Therefore, it is unclear if the Proposal requests the board of directors to amend the Company's bylaws to:

1. Allow shareholders holding not less than 10% of the voting power of the Company to call a special meeting, since the state law applicable to the Company does not mandate a minimum ownership level; or

2. Allow shareholders holding some lower percentage of the voting power of the Company to call a special meeting, since the state law applicable to the Company does not mandate a minimum ownership level.

These two understandings of the Proposal are fundamentally inconsistent, as a 10% threshold would not be the "lowest percentage" of the voting power "permitted by state law" for calling a special meeting for a company incorporated in Delaware. In addition, as discussed in greater detail below, the Proposal provides no guidance or clarification as to how a Delaware corporation (or any other company subject to the laws of a state with no minimum ownership standard regarding when a shareholder may call a special meeting) should determine the "lowest percentage" to be used in the requested bylaw. Therefore, there is no basis for determining what level of stock ownership would be necessary for a shareholder or group of shareholders to obtain in order to be eligible to call a special meeting.

In previous proposals submitted to other companies by the Proponent (individually or as a representative), the qualifying language used to modify the eligibility requirements for ownership thresholds for calling a special meeting was as follows: "or the lowest percentage allowed by state law *above 10%*" (emphasis added).[4] This language set a minimum ownership threshold of 10%, but allowed for implementation of a higher threshold (*i.e.*, the lowest percentage above 10%) if required by state law. Here, however, the term "above 10%" has been deliberately omitted. In previous instances where the Staff has refused to exclude similar proposals under Rule 14a-8(i)(3), the term "above 10%" has always been included to modify the

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special meeting. Thirty-two states have a 10% threshold..." (available at: http://www.wmitchell.edu/lawreview/Volume32/Issue2/GaronStanchfieldMatheson32-2.pdf).

3 A copy of the Company's Amended and Restated Bylaws is filed as Exhibit 3.1 to a Current Report on Form 8-K/A filed with the Commission on December 20, 2010.

4 *See, e.g.*, *Marathon Oil Corp.* (December 23, 2010) and *Gilead Sciences, Inc.* (January 4, 2011). *See also*, proposals included in the proxy materials for the 2011 annual meetings of shareholders of Goldman Sachs Group, Inc. (page 42) and NYSE-Euronext (page 70).

"or the lowest percentage allowed by law" language included in the proposals. *See, e.g., The Hain Celestial Group, Inc.* (September 16, 2010); *Chevron Corporation* (March 24, 2009); *and Safeway Inc.* (March 5, 2009). The absence of the essential "above 10%" qualifier in this Proposal clearly distinguishes it from the proposals addressed in these other letters, as the specific wording of this Proposal presents no minimum ownership threshold for a shareholder or group of shareholders to have the power to call a special meeting.

The proposals in *AT&T Inc.* (January 18, 2007) and *Citigroup, Inc.* (February 23, 2007) requested the board of each company to amend that company's bylaws to allow "holders of at least 10% to 25% of outstanding common stock the power to call a special meeting." In both of those situations, the companies asserted that the threshold -- *i.e.*, "at least 10% to 25% of outstanding common stock" -- was impermissibly vague and indefinite because shareholders supporting the proposal might expect the board to adopt a threshold of 10% and the board might actually adopt a 25% threshold in implementing the proposal. However, the Proponent asserted that this language was intended to provide flexibility to the board, as shareholders voting on the proposal would be aware that adoption of a special meeting threshold could fall at any level within the specified range. The Staff apparently was unable to concur with the companies' views that the language was vague and indefinite and did not permit exclusion in reliance on Rule 14a-8(i)(3). The language of the Proposal ("holding not less than one-tenth [(or the lowest percentage of our outstanding common stock permitted by state law)] of the voting power") differs fundamentally from these prior situations, as it does not create a range in which the board has "flexibility" to act (which was created in those situations by the language "at least 10% to 25% of outstanding common stock"). Instead, the language of the Proposal, particularly in the context of a Delaware corporation such as the Company, merely creates confusion as to most significant aspect of the Proposal -- the minimum ownership threshold that it seeks with regard to the calling of a special meeting.

The Staff has consistently permitted exclusion of a proposal where the actions taken by the company to implement the proposal might significantly vary from the actions envisioned by the shareholders voting on the proposal. In *Time Warner Inc.* (January 31, 2008), the Staff excluded a proposal that sought "no restriction" on the right of a shareholder to call a special meeting "compared to the standard allowed by applicable law" on the basis that the proposal was vague and misleading because the company could not infer whether the proposal was intended to eliminate restrictions on (i) required minimum stock holdings for a shareholder to call a special meeting, (ii) subjects to be brought before a special meeting or (iii) the frequency with which special meetings may be called. *See also Raytheon Company* (March 28, 2008); *Office Depot, Inc.* (February 25, 2008); *Schering-Plough Corporation* (February 22, 2008); *Mattel, Inc.* (February 22, 2008); *and Bristol-Myers Squibb Company* (January 30, 2008).

As discussed above, the Proposal is subject to conflicting interpretations because it fails to define or provide adequate guidance to shareholders or the board of directors as to the principal aspect of the Proposal: who will be entitled to call special shareholder meetings. The Proposal fails to specify a minimum threshold percentage of voting power or number or value of shares requisite for a shareholder or group of shareholders to request that a special meeting be called, and even leaves open the possibility that the threshold might be ownership of only a single share of stock (given that the DGCL does not specify a minimum percentage of stock

ownership for shareholders to be able to call a special meeting of shareholders). Neither the Proposal nor the Supporting Statement address the absence of a minimum percentage of stock ownership standard under Delaware law or the impact of the absence of such a standard on the "or the lowest percentage of our outstanding common stock permitted by state law" language included in the Proposal. As such, there is no guidance in the Proposal or Supporting Statement as to whether the Proposal (i) seeks to set an ownership threshold for a shareholder or group of shareholders to have the power to call a special meeting at 10%, (ii) seeks to set an ownership threshold for a shareholder or group of shareholders to have the power to call a special meeting at some other unspecified minimum threshold, or (iii) seeks to give such power to call a special meeting to every individual shareholder (regardless of his or her holdings). In addition, if the Proposal seeks an ownership threshold at some level other than 10%, it appears that it would be necessary to establish that threshold as "the lowest *percentage* of our outstanding common stock permitted by state law" (emphasis added); however, as the DGCL sets no minimum ownership percentage, it is unclear how such a "percentage" would be implemented. Indeed, it would appear to be impossible to implement such a "percentage" standard under the DGCL, as it would not be possible to express one share of common stock (the ownership amount necessary to qualify as a "shareholder") as a "percentage" of the Company's outstanding common stock because that "percentage" would change with each issuance of even a single share of common stock (or repurchase of even a single share of outstanding common stock) by the Company.

In *Pfizer Inc.* (February 18, 2003), the Staff concurred with the company's view that a proposal requesting that all stock option grants to directors and management be made at no less than the "highest stock price" was vague and indefinite because neither the company nor shareholders would know with certainty if the quoted phrase referred to the highest price at which the stock trades on the date the board granted the options, the highest price at which the stock had ever traded, or based on a formula that would take into account potential future higher stock prices. Similarly, the Proposal is impermissibly vague and indefinite because it is unclear how the Company would express a stock ownership threshold of "the lowest percentage of [the Company's] outstanding stock permitted by state law" in its governing documents, as the DGCL does not contain any ownership limitations or percentage thresholds. As a result, shareholders have no guidance as to what threshold level of ownership the Proposal requires, and the board of directors will not know how to implement the Proposal if it is approved by the shareholders.

For the reasons set forth above, the Company believes that the Proposal is materially false and misleading because it is so vague and indefinite that neither shareholders in voting on the Proposal, nor the Company in implementing the Proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires. As such, any action ultimately taken by the Company to implement the Proposal could be significantly different from the actions envisioned by shareholders voting on the Proposal. Accordingly, the Company believes that it may properly exclude the Proposal from its 2012 Proxy Materials in reliance on Rule 14a-8(i)(3).

2. *The Proposal is impermissibly vague and misleading as to the meaning of "non-emergency circumstances"*

The Proposal requires that the proposed ability for shareholders to call special meetings "would include during non-emergency circumstances." This phrase is wholly vague and indefinite, as neither the Proposal nor the Supporting Statement offers any guidance to voting shareholders as to what is meant by "non-emergency circumstances." The Staff has emphasized in recent years that shareholder proposals may be excluded as vague and indefinite when they fail to define key terms. *See, e.g., AT&T Corporation* (March 7, 2002) (excluding a proposal urging the implementation of a plan that would be effective "until the Company returns to a respectable level of profitability, the dividends are raised, and share price increases considerably" as materially vague and indefinite because the key terms were so inherently subjective and undefined that reasonable shareholders could have reached differing interpretations of their meaning). If a shareholder voting on the proposal would have no reasonable certainty as to the proposal's effect if implemented, then the proposal is materially vague and indefinite.

Here the term "non-emergency" is crucial to an investor's understanding of the scope of the Proposal, and the lack of definition of this term inherently renders it materially misleading. Specifically, shareholder action (whether such action is undertaken at an annual meeting, special meeting or by written consent) cannot be inconsistent with the law, including the other provisions of the DGCL. *See* CA v. AFSCME, No. 329, 2008, Del. S. Ct., July 17, 2008 (***"CA v. AFSCME"***), at footnote 7. In this regard, Section 141(a) of the DGCL states "[t]he business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." As noted in CA v. AFSCME:

> No such broad management power [as that in Section 141(a)] is statutorily allocated to the shareholders. Indeed, it is well-established that stockholders of a corporation subject to the DGCL may not directly manage the business and affairs of the corporation, at least without specific authorization in either the statute or the certificate of incorporation.[6] Therefore, the shareholders' statutory power to adopt, amend or repeal bylaws is not coextensive with the board's concurrent power and is limited by the board's management prerogatives under Section 141(a).[7]

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[6] See, e.g., *McMullin v. Beran*, 765 A.2d 910, 916 (Del. 2000) ("[o]ne of the fundamental principles of the Delaware General Corporation Law statute is that the business affairs of a corporation are managed by or under the direction of its board of directors."); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291-92 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation.[...] Section 141(a)...confers upon any newly elected board of directors *full* power to manage and direct the business and affairs of a Delaware corporation.") (emphasis in original) (internal citations omitted);

Aronson v. Lewis, 473 A.2d 805, 811 (Del. 1984) ("[a] cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation.").

[7] Because the board's managerial authority under Section 141(a) is a cardinal precept of the DGCL, we do not construe Section 109 as an "except[ion]... otherwise specified in th[e] [DGCL]" to Section 141(a). Rather, the shareholders' statutory power to adopt, amend or repeal bylaws under Section 109 cannot be "inconsistent with the law," including Section 141(a).

Although the decision in CA v. AFSCME addressed the specific question of whether a proposed bylaw amendment was a proper matter for shareholder action under Delaware law, the analytical framework set forth in that decision is equally applicable to other types of shareholder action -- that is, any business put before shareholders at an annual or special meeting must be a proper subject for shareholder action under state law.

The Proponent revised the Proposal (from versions submitted to other companies) to specify that the power to call a special meeting "would include during non-emergency circumstances." As such, the Proposal's language that would enable a shareholder or group of shareholders to call a special meeting "during non-emergency circumstances" appears to indicate that such meetings could be called for any reason (including, for example, to take action to "directly manage the business and affairs of the corporation"), and not only to attend to matters that are a proper subject for shareholder action under state law (*i.e.*, actions that do not "directly manage the business and affairs of the corporation"). In *Commonwealth Energy Corporation* (November 15, 2002), the Staff concurred with the view that a proposal seeking to amend the bylaws to specify when and where annual meetings should be held and restrict an outgoing board to considering only election and "emergency" issues could be excluded in reliance on Rule 14a-8(i)(3). Specifically, the company asserted that shareholders and the company would not know what issues could be considered by an outgoing board because the proposal did not define what constitutes an "emergency." *See also, A.H. Belo Corporation* (January 29, 1998) (excluding a proposal that the company sever ties to anti-democratic organizations on the grounds that "the proposal appears to involve vague and indefinite determinations concerning what constitutes an organization which denies 'government with the consent of the governed' and 'other basic freedoms'...[because we] believe that neither the shareholders voting on the proposal, nor the Company, would be able to determine with reasonable certainty what measures the Company would take if the proposal was approved."). Similarly, the Proposal does not clearly describe the circumstances in which it would be appropriate for a shareholder to call a special meeting because the operative term ("non-emergency circumstances") is undefined and, in fact, is unlimited. Thus, the language of the Proposal that the right to call a special meeting "would include during non-emergency circumstances" misleadingly indicates that the power to call a special meeting that would be established by the Proposal would allow for a shareholder or group of shareholders to call a special meeting for purposes beyond those that are appropriate for shareholder action under state law.

For the reasons set forth above, the Company believes that the Proposal is materially false and misleading because it is so vague and indefinite that shareholders considering the

Proposal will be unable to understand with certainty what they are being asked to vote on and, if adopted, any action ultimately taken by the Company to implement the Proposal could be significantly different from the actions envisioned by shareholders voting on the Proposal. Accordingly, the Company believes that it may properly exclude the Proposal from its 2012 Proxy Materials in reliance on Rule 14a-8(i)(3).

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly exclude the Proposal from its 2012 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company excludes the Proposal from its 2012 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (202) 383-5418.

Sincerely,

Martin P. Dunn
of O'Melveny & Myers LLP

Attachments

cc: Mr. John Chevedden

Michael J. Callahan, Esq.
Christina Lai, Esq.
Yahoo! Inc.

EXHIBIT A

FISMA & OMB Memorandum M-07-16

From: [mailto:
Sent: Friday, December 30, 2011 01:19 PM
To: Cathy La Rocca; Stephen Carlson (Legal)
Subject: Rule 14a-8 Proposal (YHOO)

Dear Ms. La Rocca,
Please see the attached Rule 14a-8 Proposal.
Sincerely,
John Chevedden

JOHN CHEVEDDEN

FISMA & OMB Memorandum M-07-16

FISMA & OMB Memorandum M-07-16

Mr. Roy J. Bostock
Chairman of the Board
Yahoo! Inc. (YHOO)
701 1st Ave
Sunnyvale CA 94089
Phone: 408 349-3300
Fax: 408 349-3301

Dear Mr. Bostock,

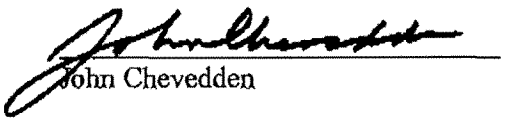
I purchased stock and hold stock in our company because I believed our company has unrealized potential. I believe some of this unrealized potential can be unlocked by making our corporate governance more competitive. And this will be virtually cost-free and not require lay-offs.

This Rule 14a-8 proposal is respectfully submitted in support of the long-term performance of our company. This proposal is submitted for the next annual shareholder meeting. Rule 14a-8 requirements will be met including the continuous ownership of the required stock value until after the date of the respective shareholder meeting and presentation of the proposal at the annual meeting. This submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

In the interest of company cost savings and improving the efficiency of the rule 14a-8 process please communicate via email to ***FISMA & OMB Memorandum M-07-16***

Your consideration and the consideration of the Board of Directors is appreciated in support of the long-term performance of our company. Please acknowledge receipt of this proposal promptly by email to ***FISMA & OMB Memorandum M-07-16***

Sincerely,



John Chevedden

December 30, 2011

Date

cc: Michael J. Callahan
Corporate Secretary
Cathy La Rocca
Stephen Carlson
PH:
FX:

[YHOO: Rule 14a-8 Proposal, December 30, 2011]

3* – Special Shareowner Meetings

Resolved, Shareowners ask our board to take the steps necessary unilaterally (to the fullest extent permitted by law) to amend our bylaws and each appropriate governing document to enable one or more shareholders, holding not less than one-tenth* of the voting power of the Corporation, to call a special meeting. This application of this would include during non-emergency circumstances. *Or the lowest percentage of our outstanding common stock permitted by state law.

This includes that such bylaw and/or charter text will not have any exclusionary or prohibitive language in regard to calling a special meeting that apply only to shareowners but not to management and/or the board (to the fullest extent permitted by law). This proposal does not impact our board's current power to call a special meeting.

Adoption of this proposal can probably best be accomplished in a simple and straight-forward manner with clear and concise text of less than 100-words. This proposal topic won more than 60% support at CVS, Sprint and Safeway.

The merit of this Special Shareowner Meeting proposal should also be considered in the context of the opportunity for additional improvement in our company's 2011 reported corporate governance in order to make our company more competitive:

The Corporate Library, an independent investment research firm, rated our company "High Concern" for Executive Pay. Named Executive Officers (NEOs) received two types of performance-based restricted stock units (RSUs): the first is based on only three-year performance periods that paid for sub-median Total Shareholder Return – 50% of the target for performance at the 35th percentile – while the second relied on one year performance periods.

On short-term executive pay, a significant portion (30%) of annual incentive pay consisted of the executive pay committee's subjective evaluation of our executives' performance. Discretionary conditions can undermine the effectiveness of an incentive pay plan. Finally, NEOs were eligible for golden hello bonuses – Chief Product Officer Blake Irving received $250,000 in cash, 400,000 options and 125,000 RSUs while Executive Vice President Ross Levinsohn received $500,000 in cash, 400,000 options and 175,000 RSUs. The Corporate Library earlier said that Carol Bartz's 2009 golden hello consisted of an inducement option with a grant date value of $27 million.

Gary Wilson, on our audit and executive pay committees, was marked as "Flagged (Problem) directors" by The Corporate Library due to his responsibilities on the board of Northwest Airlines leading up to its bankruptcy.

Our Chairman Roy Bostock received our highest negative votes (above 20%). Arthur Kern had 15-years long-tenure (independence concern) and chaired our executive pay committee.

Please encourage our board to respond positively to this proposal to initiate improved corporate governance and make our company more competitive:

Special Shareowner Meetings – Yes on 3.*

Notes:
John Chevedden, ***FISMA & OMB Memorandum M-07-16*** sponsored this proposal.

Please note that the title of the proposal is part of the proposal.

*Number to be assigned by the company.

This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

> Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:
>
> - the company objects to factual assertions because they are not supported;
> - the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
> - the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
> - the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.
>
> ***We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.***

See also: Sun Microsystems, Inc. (July 21, 2005).
Stock will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***FISMA & OMB Memorandum M-07-16***

From: Stephen Carlson (Legal)
Sent: Monday, January 09, 2012 5:41 PM
To: ***FISMA & OMB Memorandum M-07-16***
Cc: Christina Lai
Subject: Yahoo!: Rule 14a-8 Submission

Mr. Chevedden,

Attached please find Yahoo!'s response to your Rule 14a-8 submission dated December 30, 2011.

Very truly yours,

stephen
carlson
legal director

701 first avenue, sunnyvale, ca, 94089-0703

YAHOO!

YAHOO!

January 9, 2012

Via Overnight Mail and Email ***FISMA & OMB Memorandum M-07-16***

Mr. John Chevedden

FISMA & OMB Memorandum M-07-16

Re: *Shareholder Proposal*

Dear Mr. Chevedden:

We received the shareholder proposal titled "Special Shareowner Meetings" (the "Proposal") that you submitted via facsimile on December 30, 2011 for inclusion in the proxy materials for the 2012 annual meeting of stockholders of Yahoo! Inc. (the "Company").

The Proposal contains certain procedural deficiencies, as set forth below, which the Securities and Exchange Commission ("SEC") regulations require us to bring to your attention.

Rule 14a-8 under the Securities Exchange Act of 1934, as amended, sets forth certain eligibility and procedural requirements that must be satisfied for a shareholder to submit a proposal for inclusion in a company's proxy materials. One of these requirements is Rule 14a-8(b), which requires each shareholder proponent to submit sufficient proof that he or she has continuously held at least $2,000 in market value, or 1%, of a company's shares entitled to be voted on the proposal for at least one year as of the date the shareholder proposal was submitted. In accordance with Rule 14a-8(f) (Question 6), we hereby notify you that we are unable to confirm that the proposal you submitted meets this requirement of Rule 14a-8 for inclusion in the Company's proxy materials because (i) the Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy Rule 14a-8's share ownership requirements, and (ii) we did not receive proof from you that you have satisfied Rule 14a-8's share ownership requirements as of the date the proposal was submitted to the Company.

To remedy this defect, you must submit sufficient proof of ownership of the Company's shares. As explained in Rule 14a-8(b), sufficient proof may be in the form of:

- a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, as of the date of the Proposal, you continuously held the requisite number of the Company's shares for at least one year; or

- if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the Company's shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number of shares for the one-year period.

701 first avenue, sunnyvale, ca 94089 • phone: 408 349 3300 fax: 408 349 3301

For your reference, please find enclosed a copy of SEC Rule 14a-8.

To help shareholders comply with the requirement to prove ownership by providing a written statement from the "record" holder of the shares, the SEC's Division of Corporation Finance (the "SEC Staff") recently published Staff Legal Bulletin No. 14F ("SLB 14F"). In SLB 14F, the SEC Staff stated that only brokers or banks that are Depository Trust Company ("DTC") participants will be viewed as "record" holders for purposes of Rule 14a-8. Thus, you will need to obtain the required written statement from the DTC participant through which your shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check the DTC's participant list, which is currently available on the Internet at http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf. If your broker or bank is not on DTC's participant list, you will need to obtain proof of ownership from the DTC participant through which your broker or bank holds the Company's shares. You should be able to determine the name of this DTC participant by asking your broker or bank. If the DTC participant knows the holdings of your broker or bank, but does not know your holdings, you may satisfy the proof of ownership requirement by obtaining and submitting two proof of ownership statements verifying that, at the time the Proposal was submitted, the required amount of securities were continuously held by you for at least one year -- with one statement from your broker or bank confirming your ownership and the other statement from the DTC participant confirming the broker's or bank's ownership. Please see the enclosed copy of SLB 14F for further information.

In accordance with Rule 14a-8(f)(1), and in order for the Proposal you submitted to be eligible for inclusion in the Company's proxy materials for its 2012 annual meeting of stockholders, your response to the requests set forth in this letter must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this letter.

Please note that the requests in this letter are without prejudice to any other rights that the Company may have to exclude your proposal from its proxy materials on any other grounds permitted by Rule 14a-8.

If you have any questions with respect to the foregoing, please contact me.

Very truly yours,

Christina Lai
Associate General Counsel

Enclosures:
Rule 14a-8 under the Securities Exchange Act of 1934
Division of Corporation Finance Staff Legal Bulletin No. 14F

From: ***FISMA & OMB Memorandum M-07-16***
Date: Thu, 12 Jan 2012 10:47:11 -0800
To: Christina Lai
Cc: "Stephen Carlson (Legal)"
Subject: Rule 14a-8 Proposal (YHOO) ntn

Dear Ms. Lai, Attached are the letters requested. Please let me know whether there is any question.
Sincerely,
John Chevedden

RAM TRUST SERVICES

Post-it® Fax Note 7671	Date 1-12-12	# of pages ▶
To Christina Lai	From John Chevedden	
Co./Dept.	Co.	
Phone #	Phone # ***FISMA & OMB Memorandum M-07-16***	
Fax #	Fax #	

January 12, 2012

John Chevedden

FISMA & OMB Memorandum M-07-16

To Whom It May Concern,

Ram Trust Services is a Maine chartered non-depository trust company. Through us, Mr. John Chevedden has continuously held no less than 260 shares of Yahoo, (YHOO) common stock, CUSIP #984332106, since at least November 1, 2010. We in turn hold those shares through The Northern Trust Company in an account under the name Ram Trust Services.

Sincerely,

Cynthia C. O'Rourke

Cynthia O'Rourke
Sr. Portfolio Manager

45 EXCHANGE STREET PORTLAND MAINE 04101 TELEPHONE 207 775 2354 FACSIMILE 207 775 4289

January 12, 2012

John Chevedden

FISMA & OMB Memorandum M-07-16

RE: Yahoo (Shareholder Resolution) CUSIP # 984332106
FISMA & OMB Memorandum M-07-16
Account Ram Trust Services

Dear Mr. Chevedden:

The Northern Trust Company is the custodian for Ram Trust Services. As of January 12, 2012, Ram Trust Services held 360 shares of Yahoo, Company CUSIP #984332106.

The above account has continuously held at least 260 shares of YHOO common stock since at least November 1, 2010.

Sincerely,

Rhonda Epler-Staggs
Northern Trust Company
Correspondent Trust Services
(312) 444-4114

CC: John P.M. Higgins, Ram Trust Services