



DIVISION OF
CORPORATION FINANCE

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

May 12, 2017

**Response of the Office of Mergers and Acquisitions
Division of Corporation Finance**

Brian V. Breheny, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

**Re: Yahoo! Inc.
Request for No-Action Relief under Rule 13e-4(d)(1), Rule 13e-4(e)(3), Rule
13e-4(f)(1)(ii) and Rule 14e-1(b)**

Dear Mr. Breheny:

We are responding to your letter dated May 12, 2017, addressed to Ted Yu, Nicholas P. Panos and Christina M. Thomas, as supplemented by telephone conversations with the staff, regarding your request for no-action relief. To avoid having to recite or summarize the facts set forth in your letter, we attach a copy of your letter. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter.

On the basis of the representations and the facts presented in your letter, the Division of Corporation Finance will not recommend that the Commission take enforcement action under Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii), and 14e-1(b) if Yahoo relies on the formula described in your letter to determine the final purchase price paid for the shares of Common Stock tendered into, and the number of shares ultimately accepted in, its planned issuer tender offer. In issuing this no-action relief, we considered the following facts, among others:

- Yahoo and Verizon entered into a Stock Purchase Agreement for a Sale Transaction which, once completed, will result in Yahoo becoming an investment company registered under the Investment Company Act of 1940 and shares of Common Stock being removed from the S&P 500 index;
- the purpose of the Offer is to provide liquidity to a potentially significant number of Yahoo shareholders who will be forced to sell their shares of Common Stock at or prior to the closing of the Sale Transaction due to restrictions on holding shares of an investment company or securities that are not included in the S&P 500 index;

- the maximum dollar value of Common Stock being sought, as well as the maximum number of shares of Common Stock being sought, will be disclosed on the cover page of the Offer to Purchase;
- the exact number of shares of Common Stock to be purchased in the Offer will be based on the purchase price established by Yahoo shareholders as determined in accordance with the terms of the Offer;
- the formula for determining the purchase price, including the Permitted Range, will be disclosed in the Offer to Purchase and remain fixed throughout the duration of the Offer;
- if a change in the formula occurs, the Offer will remain open for at least 10 business days from the date that notice of such change is first published, sent, or given to Yahoo shareholders;
- regardless of the purchase price determined under the formula, Yahoo shareholders will receive at least the Minimum Consideration, which will be no less than \$37 in cash per share of Common Stock;
- the Minimum Consideration will be disclosed in the Offer to Purchase and the Offer will remain open for at least ten business days from the date that a notice of a change in the Minimum Consideration is first published, sent, or given to Yahoo shareholders;
- the Offer to Purchase will disclose a table showing illustrative calculations of the Indicative Offer Consideration, which is the Offer consideration potentially payable under the formula;
- Yahoo will provide a webpage and toll-free telephone number that enable shareholders to obtain information about the Indicative Offer Consideration and other pricing information throughout the Offer period;
- Yahoo will publish the Alibaba VWAP to be used in the formula, as well as the prices per share payable under the formula within the Permitted Range (denominated in dollar amounts), on the Offer's webpage and in a press release by no later than 4:30 p.m. Eastern Standard Time on the second to last full business day prior to the Expiration Date, and electronically file that information on an amended Schedule TO;
- Yahoo shareholders will have a minimum of two full business days to consider the Alibaba VWAP and potential cash prices payable under the formula within the Permitted Range and decide whether to tender or withdraw (with withdrawal rights provided until the Offer expires);
- Yahoo's representation that the formula is intended to reflect the current correlation between the trading price of its Common Stock and the trading price of Alibaba ADSs, as well as its belief that basing the formula on its Common Stock will not properly track the key market

driver of the value of its Common Stock; and

- Alibaba ADSs are listed for trading on the NYSE and Yahoo Common Stock is listed for trading on Nasdaq.

The foregoing no-action relief is based solely on the representations and the facts presented in your letter dated May 12, 2017 and does not represent a legal conclusion with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. This no-action relief is strictly limited to the application of the regulatory provisions listed above to the Offer. Yahoo should discontinue the Offer pending further consultations with the staff if any of the facts or representations set forth in your letter change.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 9(a), 10(b) and 14(e) of the Exchange Act and Rules 10b-5 and 14e-3 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the participants in the Offer. The Division of Corporation Finance expresses no view with respect to any other questions that the Offer may raise, including, but not limited to, the adequacy of the disclosure concerning, and the applicability of any other federal or state laws to, the Offer.

Sincerely,

/s/ Ted Yu

Ted Yu
Chief, Office of Mergers and Acquisitions
Division of Corporation Finance

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May 12, 2017

VIA E-MAIL

Mr. Ted Yu, Chief
Mr. Nicholas P. Panos, Senior Special Counsel
Ms. Christina M. Thomas, Attorney-Advisor
Office of Mergers and Acquisitions
Division of Corporation Finance
U. S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-7010

Re: Formula Pricing Mechanism in Issuer Tender Offer by Yahoo! Inc.

Dear Messrs. Yu and Panos and Ms. Thomas:

We are writing on behalf of our client Yahoo! Inc., a Delaware corporation ("Yahoo" or the "Company"), in connection with the Company's plan to commence an issuer tender offer (the "Offer") to offer to purchase shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), for an aggregate consideration of up to \$3.0 billion. The Offer will be subject to Rule 13e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in addition to Regulation 14E and Sections 13(e) and 14(e) under the Exchange Act.

We are writing to request, on behalf of the Company, that the staff (the "Staff") of the U.S. Securities and Exchange Commission (the "SEC") confirm that it will not recommend that the SEC take enforcement action against the Company pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act with respect to the requirement that the total number of shares of Common Stock sought in the Offer be specified and the Company's use of the Formula (as defined below) to determine the consideration to be paid per share of Common Stock properly tendered pursuant to the Offer.

I. Background

The Company and Verizon Communications Inc. ("Verizon") entered into a stock purchase agreement, dated as of July 23, 2016, as amended as of February 20, 2017 (the "Stock Purchase Agreement"), whereby the Company has agreed to sell, and Verizon has agreed to purchase, the Company's operating business for an aggregate cash purchase price equal to \$4,475,800,000 in cash, subject to certain adjustments (the "Sale Transaction"). Prior to

completion of the Sale Transaction, the Company will transfer to Yahoo Holdings, Inc. ("Yahoo Holdings"), a wholly-owned subsidiary of Yahoo, all of the assets and liabilities of Yahoo's operating business (the "Business") (other than certain specified excluded assets and retained liabilities as described more fully in the following paragraph). Under the Stock Purchase Agreement, the Company has agreed to sell to Verizon all of the outstanding shares of Yahoo Holdings and, prior to the sale of Yahoo Holdings, to cause Yahoo Holdings to sell to a foreign subsidiary of Verizon all of the equity interests in a newly formed foreign subsidiary of Yahoo Holdings that will hold certain foreign subsidiaries relating to the Business, following the transfer to Yahoo Holdings of all of the assets and liabilities relating to the Business.

Upon completion of the Sale Transaction, the Company's remaining assets will consist solely of the excluded assets, which include cash and marketable debt securities, shares in Alibaba Group Holding Limited ("Alibaba"), shares in Yahoo Japan Corporation, certain other minority equity investments, and Excalibur IP, LLC (a subsidiary owning a portfolio of non-core patent assets), and certain other remaining liabilities. Following the closing of the Sale Transaction, the Company will continue to be a Delaware corporation publicly traded on the NASDAQ Global Select Market ("Nasdaq"), but will be renamed "Altaba Inc." and trade under the ticker symbol "AABA." Because the Company's assets will then consist primarily of its equity investments, short-term debt investments, and cash, upon the closing, the Company will be required to register as an investment company under the Investment Company Act of 1940.

The Company has disclosed that, after completion of the Sale Transaction, the Company intends to return substantially all of its cash to its shareholders, although the Company will retain sufficient cash to satisfy its obligations to creditors (including the holders of the Company's outstanding 0.00% Convertible Senior Notes due 2018) and for working capital.

The Sale Transaction is subject to approval by the Company's shareholders at a special meeting to be held on June 8, 2017. The Company filed a definitive proxy statement with the SEC on April 24, 2017 (the "Proxy Statement"). The parties anticipate closing the Sale Transaction in early to mid-June 2017. The Sale Transaction is not conditioned on commencement or consummation of the Offer.

II. The Offer

The Company is planning to commence the Offer to offer to acquire a portion of the Company's outstanding Common Stock from its shareholders (the "Shareholders") for cash based on the Formula for maximum aggregate consideration of \$3.0 billion. The purpose of the Offer is to provide liquidity to a potentially significant number of Shareholders that will be forced to sell their shares at or prior to the closing of the Sale Transaction. Certain of them will be subject to restrictions on holding shares of the Company once it becomes a registered investment company and other shareholders, including index funds, will be required to sell the Company's shares when they are removed from the Standard & Poor's 500 Composite Index (the "S&P 500") and other indices.

The Offer is expected to commence no later than 20 business days prior to the expected closing date of the Sale Transaction, and the date on which the Offer will be scheduled to expire

(the “Expiration Date”) will be the expected closing date of the Sale Transaction. Participation in the Offer by the Shareholders is entirely voluntary. None of the Company, the Company’s Board of Directors or executive officers, the information agent or any agent or other person will make any recommendation to the Shareholders as to whether they should tender their Common Stock pursuant to the Offer. The Offer will be subject to various closing conditions, including conditions that the Sale Transaction has been consummated, the Company’s shares have been removed from the S&P 500, and that the Alibaba VWAP (as defined below) has not fallen below \$80.00. The Offer will not be subject to a financing condition or a minimum condition. The cover page of the Offer to Purchase (the “Offer to Purchase”) will state the maximum number of shares of Common Stock that may be purchased in the Offer, and will explain that the exact number of shares of Common Stock to be purchased in the Offer will be based on the purchase price established by the Shareholders determined in accordance with the terms of the Offer disclosed in the Offer to Purchase. The terms of the Offer will be more fully described in the Offer to Purchase to be filed as an exhibit to the Schedule TO-I to be filed by the Company (the “Schedule TO”).

The Offer will be structured as a modified Dutch auction tender offer, as described in SEC and Staff guidance related to modified Dutch auction tender offers.¹ Specifically, the Company will invite its Shareholders who tender shares of Common Stock in the Offer to select a multiple, not in excess of 0.420 nor less than 0.370 (the “Permitted Range”), which will be fixed throughout the duration of the Offer and set forth in the Offer to Purchase and the related letter of transmittal.² The Company will review the multiples at which Shareholders have tendered their shares of Common Stock and determine a final multiple in accordance with

¹ See Securities Act Release No. 33-6653 (July 11, 1986); *Alliance Semiconductor Corp.* (Sept. 22, 2006).

² The high end of the Permitted Range will be set to reflect the approximate price ratio correlation of the Common Stock trading price with the trading price of Alibaba American Depositary Shares (the “ADSs”) shortly before the commencement of the Offer. The lower end of the Permitted Range, therefore, will generally reflect a discount to the valuation of the Common Stock relative to the trading price of the ADSs. To illustrate how the Formula will work, based on the closing price of the ADSs on April 27, 2017 (which was \$115.43), the high end of the Permitted Range (0.420) would result in cash consideration per share of Common Stock of \$48.48 and the low end of the Permitted Range (0.370) would result in cash consideration per share of Common Stock of \$42.71. The closing price of the Common Stock on April 27, 2017 was \$48.36. The high end of the range will not be more than 15% greater than the low end. Tendering Shareholders will be able to select from multiples increasing in .002 increments. The Company believes that the use of the Permitted Range, which could result in Offer consideration that reflects a discount to the valuation of the Common Stock, is not a fraudulent, deceptive or manipulative act in violation of Section 14(e). As noted above, the Company is conducting the Offer to provide liquidity to those Shareholders that may be required to dispose of the shares of Common Stock held by them during a period in which the valuation of the Common Stock could be negatively impacted. The Company does not believe that setting the Permitted Range so that a premium above the valuation of the Common Stock could be possible properly reflects the expected market value of the Common Stock during the period prior to and including the closing of the Sale Transaction. Instead, the Company established the Permitted Range to reflect the possible impact on the valuation of the Common Stock during the period prior to and including the closing of the Sale Transaction. As in other modified Dutch auctions, the input from the Shareholders regarding the multiples in the Permitted Range will decide the Final Multiple. The rationale for the use of the Permitted Range and other aspects of the Formula, including the market price of the Common Stock prior to the launch of the Offer, will also all be prominently disclosed in the Offer to Purchase.

traditional modified Dutch auction tender offer mechanics (*i.e.*, the lowest multiple that will clear the aggregate consideration of \$3.0 billion or, if less, the top of the multiple range) (the “Final Multiple”). The Company will apply the Final Multiple to the per share daily volume-weighted average pricing for an American Depositary Share (the “ADSs”) of Alibaba (the “Alibaba VWAP”), as displayed under the heading “Bloomberg VWAP” on Bloomberg page BABA <UN Equity> AQR (or any equivalent successor page), on the second to last full business day prior to the Expiration Date (*i.e.*, the third to last full business day of the Offer period), the product of which will be the share price paid for all shares of Common Stock tendered and accepted for payment (the “Formula”).³ Accordingly, the Formula will ensure that the same per share purchase price will be paid to every Shareholder that has properly tendered shares of Common Stock at or below the Final Multiple, subject to proration as described below. The Alibaba VWAP will be subject to a floor of \$100.00 which when applied to the lower end of the Permitted Range will guarantee, if the Offer is completed, that Shareholders that tender Common Stock into the Offer will receive at least \$37.00 per share (the “Minimum Consideration”).⁴

We have been advised by the Company that the Formula is intended to reflect the current correlation between the trading prices of the Common Stock, which is listed for trading on Nasdaq, and the ADSs, which are listed for trading on the New York Stock Exchange (the “NYSE”). The Company has observed, based on trading data, a strong correlation between the trading prices of the Common Stock and the trading prices of the ADSs.⁵ This correlation, combined with the Company’s belief that its investment in Alibaba is generally viewed by the market as its most significant and important asset, supports the Company’s conclusion that the value of the Common Stock is highly sensitive to movements in the trading price of the ADSs such that an increase (or decrease) in the trading price of the ADSs results in an increase (or decrease) in the value of the Common Stock. Thus, in determining the Formula, the Company wanted to ensure that the price paid for shares of Common Stock tendered in the Offer reflect current market values. The use of the value of the ADSs as part of the Formula is particularly important because the Company lacks access to nonpublic information related to Alibaba’s management or operations by means of board representation or otherwise. As a result, the Company does not have any reasonable means of predicting the trading price of the ADSs or any

³ The Alibaba VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

⁴ For purposes of this letter, the Company acknowledges that a change in the Formula or Minimum Consideration will constitute a change in the consideration offered for shares of the Common Stock within the meaning of Rules 13e-4(f)(1)(ii) and 14e-1(b) and will require the Offer to remain open for at least ten business days from the date that notice of such change is first published, sent or given to Shareholders. Furthermore, in accordance with Rule 13e-4(e)(3), in the event the Formula changes, the Company also acknowledges that it will be required to disseminate promptly disclosure of such change in a manner reasonably calculated to inform Shareholders of the change.

⁵ To illustrate this correlation, the Company has supplementally provided to the Staff a graph comparing such prices from December 30, 2016 to March 31, 2017. The Company believes the strong correlation between the trading values of the two securities is driven by the fact that following the completion of the Sale Transaction, the Alibaba shares held by the Company, which had a market value of \$33 billion as of December 31, 2016 based on the trading price of Alibaba ADSs on that date, will represent approximately 62% of Yahoo’s assets.

potential impact on the highly-correlated trading price of the Common Stock throughout the Offer period.

The Company believes that applying the Final Multiple to the Alibaba VWAP will represent the most appropriate clearing price, reflecting the aforementioned high correlation between the trading prices of the ADSs and the Common Stock, the required sales of the Common Stock by certain Shareholders that are expected to occur on or around the closing date of the Sale Transaction and, as is the case generally in tender offers structured as modified Dutch auctions, the input of tendering shareholders as to the appropriate price. The Company also does not believe that basing the pricing Formula on the Common Stock will result in Offer consideration that properly tracks the key market driver of the value of the Common Stock — *i.e.*, the value of its ownership stake in Alibaba. For these reasons, the Company believes that the use of the ADSs and the modified Dutch auction mechanism are appropriate proxies for determining the Offer consideration and that the Formula reduces the potential for pricing distortions. The Formula will also allow Shareholders sufficient time to make an investment decision based on the Alibaba VWAP.

The Formula will be disclosed in the Offer to Purchase and will be constant throughout the Offer period. The Offer to Purchase will include a table showing illustrative calculations of the potential Offer consideration for the Common Stock based on the product of a range of hypothetical daily Alibaba VWAPs and multiples within the Permitted Range (the “Indicative Offer Consideration”). The Company will make this pricing information available throughout the Offer period as follows:

- the Company will maintain a dedicated webpage to provide the daily Alibaba VWAP for all business days prior to the announcement of the Alibaba VWAP to be used in the Formula, and the Indicative Offer Consideration, calculated as set forth above by the Formula, for all business days during the Offer period through the Expiration Date;
- each time the webpage is updated, it will also show a reasonably current trading price of the Common Stock (Nasdaq) and the ADSs (NYSE); and
- the Offer to Purchase will also disclose a toll-free telephone number that Shareholders may call to contact the information agent to obtain the same pricing information that is posted on the Offer webpage.

The Company will announce the Alibaba VWAP to be used in the Formula by press release and on the Offer webpage no later than 4:30 p.m., New York City time, on the second business day immediately preceding the Expiration Date (which, assuming an offer period of 20 business days, will be the 18th business day of the Offer), and will amend the Schedule TO to disclose both the Alibaba VWAP and the prices per share to be paid for the Common Stock in the Offer based on the product of the Alibaba VWAP and multiples within the Permitted Range, and attach the press release as an exhibit. The Company will apply the Final Multiple to the announced Alibaba VWAP. Because the Offer will expire at 11:59 p.m., New York City time, on the Expiration Date, Shareholders will have at a minimum two full business days to consider the

Alibaba VWAP and the range of potential cash prices to be received in the Offer and decide to tender or withdraw. Shareholders will have withdrawal rights until the Offer expires. In this regard, we note the following:

- Shareholders will be able to send via fax (through their brokers or similar institutions if they do not hold their shares directly) notices of withdrawal to the information agent for the Offer.
- Shareholders will be able to tender by faxing a voluntary offering instructions form to the information agent, and withdrawals of previous tenders will be able to be made by faxing notice of withdrawal to the information agent.⁶
- The Company will make available to Shareholders via the Offer webpage described above and in the Offer to Purchase, a notice of guaranteed delivery and a notice of withdrawal. The Offer to Purchase will explain the procedures for after-hours tenders and withdrawals, including the times and methods by which tenders and withdrawals must be made.

In the Company's view, the Formula, comprised of the Permitted Range and the Alibaba VWAP, combined with the disclosure of the Minimum Consideration will present a simple, easy-to-understand and transparent method for determining the purchase price to be paid pursuant to the Offer. Shareholders will at all times, beginning with the commencement of the Offer, have free and ready access to continuous and updated Indicative Offer Consideration through the Offer webpage and telephone numbers established for this purpose, and will have at least two full business days to tender or withdraw shares of their Common Stock after the Alibaba VWAP is announced, thereby providing them with the range of permitted cash amounts to be received in the Offer and enabling them to make informed decisions about whether or not to tender or withdraw. The Final Multiple will be disclosed in the final amendment to the Schedule TO filed in accordance with Rule 13e-4(c)(4).

III. Discussion

We respectfully request on behalf of the Company that the Staff confirm that it will not recommend that the SEC take enforcement action pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act with respect to the Company's use of the

⁶ All Shareholders will be able to have their Common Stock tendered or withdrawn via these fax procedures. However, only DTC participants (*i.e.*, brokers, and similar institutions shown on a DTC security position listing as the owners of the Common Stock) will be able to deliver such faxes. In order to facilitate use by beneficial holders of the Common Stock who own their Common Stock through a broker or similar institution of the voluntary offering instructions and withdrawal procedures applicable to tenders and withdrawals after 5:00 p.m., New York City time, on the business day immediately preceding the Expiration Date, the Offer to Purchase will inform such beneficial holders that they must make arrangements with their brokers or similar institutions for such brokers or similar institutions to fax a voluntary offering instructions form or a notice of withdrawal (as applicable) to the information agent on such beneficial holders' behalf prior to 11:59 p.m., New York City time, on the business day immediately preceding the Expiration Date.

Formula to determine the Offer consideration to be paid per share of Common Stock properly tendered pursuant to the Offer.

Rules 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under Exchange Act

Rules 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act, in relevant part, require at least ten business days remain in the offer from the date that notice of an increase or decrease in the percentage of the class of securities being sought or the consideration offered is first published, sent or given to security holders. Rule 13e-4(e)(3) under the Exchange Act, in relevant part, requires that if a material change occurs in the information published, sent or given to security holders, the issuer must disseminate promptly disclosure of the change in a manner reasonably calculated to inform security holders of the change. The Company believes that these rules do not require that the Offer period be extended or the Offer to Purchase be revised after the purchase price has been determined in accordance with the Formula, and consequently, the exact number of shares to be purchased in the Offer is determined, even though such determinations will happen after the Expiration Date.

Given the structure of the Offer, if shares of Common Stock are validly tendered at various multiples within the Permitted Range specified in the Offer, the Company will not have discretion to accept a certain number of shares. Rather, the Company is obligated to calculate the number of shares of Common Stock based upon the Final Multiple determined by the tendering Shareholders through a modified Dutch auction procedure and applied to the Alibaba VWAP that would automatically result in purchases of \$3.0 billion of Common Stock, the aggregate consideration to be paid by the Company in the Offer, as will be disclosed in the Offer to Purchase.⁷ Because the Company will announce the Formula at the commencement of the Offer and publish and make accessible Indicative Offer Consideration on a daily basis, it does not view the publication two business days prior to the Expiration Date of the Alibaba VWAP, the range of potential cash prices to be received in the Offer or the total number of shares of Common Stock sought in the Offer (assuming the Offer is fully subscribed), as changes in “the consideration offered” within the meaning of Rules 13e-4(f)(1)(ii) and 14e-1(b) or “material change[s] in the information published, sent or given to security holders” within the meaning of Rule 13e-4(e)(3).⁸ Nevertheless, because it is possible that these disclosures could be viewed as changes requiring compliance with these rules, the Company is seeking this relief from the Staff.

In the Company’s view, this interpretation is consistent with the Staff’s established interpretation of its tender offer pricing rules to permit modified Dutch auction tender offers subject to certain conditions, even though such offers do not provide security holders with the

⁷ The Company notes that, pursuant to Rule 14e-1(b), it may accept for payment an additional amount of Common Stock tendered in the Offer not to exceed two percent of the outstanding Common Stock, over the \$3.0 billion of Common Stock sought in the Offer.

⁸ The Company understands that, pursuant to Rule 13e-4(e)(3), if there is a change in the Formula, then such change would be viewed as a change in the Offer consideration and a corresponding change in the amount of securities sought in the Offer, thus requiring the Company to disseminate promptly disclosure of the change.

final offer price until offer expiration.⁹ The Company believes that the Formula is consistent with the Staff's position on modified Dutch auction tender offers and, in fact, provides certain advantages to the Shareholders. Similar to modified Dutch auction tender offers, the Offer will provide: (i) pro rata acceptance throughout the Offer with all securities purchased participating equally in prorationing (except for odd-lots);¹⁰ (ii) withdrawal rights throughout the Offer period; (iii) prompt announcement of the Final Multiple and Alibaba VWAP; and (iv) purchase of all accepted securities at the highest price paid to any tendering Shareholder under the Offer.¹¹ The consideration to be paid in the Offer will also not be an amount that is less than the Minimum Consideration.

Further, the Company believes that the description of the Formula in the Offer to Purchase, including an illustrative table showing calculations of the Offer consideration based on the product of a range of hypothetical daily Alibaba VWAPs and multiples of the Common Stock within the Permitted Range, combined with its commitment to make accessible pricing information throughout the Offer period, will provide Shareholders the information they need in order to make an informed decision with respect to the Offer. Accordingly, the Company believes Shareholders are not placed at a disadvantage for not knowing the exact number of shares the Company seeks in the Offer, as the Company remains subject to a readily identifiable purchase commitment of \$3.0 billion under the Offer.

⁹ See Securities Act Release No. 33-6653 (July 11, 1986); *Alliance Semiconductor Corp.* (Sept. 22, 2006). Further, the Company believes that this approach provides important shareholder protections cited by the Staff in a no-action letter issued to Janet S. Thiele, dated December 21, 1987.

¹⁰ If a modified Dutch auction is oversubscribed, the issuer must purchase its minimum purchase commitment at the maximum price on a pro rata basis pursuant to Rule 13e-4(f)(3). As described above, the Company expects to purchase no more than \$3.0 billion in value of its Common Stock in the Offer, at a price determined in accordance with the Formula. Therefore, if, upon the expiration of the Offer, Shareholders have validly tendered more Common Stock than the aggregate \$3.0 billion of consideration, the Company will accept for payment shares of Common Stock validly tendered and not properly withdrawn by each tendering Shareholder on a pro rata basis, other than with respect to certain odd-lot tenders. The Company will first calculate a proration factor which will equal (i) the total number of shares of Common Stock that the Company is able to accept (taking into account the Final Multiple and Alibaba VWAP) divided by (ii) the total number of shares of Common Stock validly tendered and not withdrawn. The proration factor will then be applied to each Shareholder with respect to the total number of shares of Common Stock validly tendered by such Shareholder pursuant to the Offer and not withdrawn. As noted above, the Company may also exercise its rights to accept an additional portion of tendered Common Stock, in accordance with Rule 14e-1(b).

¹¹ Pursuant to Rule 13e-4(f)(8)(ii), the consideration paid to any security holder for securities tendered in the tender offer must be the highest consideration paid to any other security holder. In the Company's view, the fact that it intends to purchase up to \$3.0 billion in value of shares of Common Stock, combined with the fact that all shares will be acquired at the same purchase price pursuant to the Formula, means that the Offer will satisfy the requirement of Rule 13e-4(f)(8)(ii) since the consideration paid to any shareholder will be the highest consideration paid to any other shareholder in the Offer.

Rule 13e-4(d)(1) under Exchange Act

Rule 13e-4(d)(1) under the Exchange Act requires that the issuer in an issuer tender offer disclose the information required by Schedule TO, which, in turn, requires in Item 4 thereof, that the issuer disclose the total number of shares of securities sought in the offer and the type and amount of consideration offered for the securities subject to the offer. While the Formula, instead of a fixed price, is being used in an effort to comply with Item 4 of Schedule TO, the Company believes the disclosure of the Formula satisfies this item of Schedule TO. For the same reasons as discussed above with respect to Rules 13e-4(f)(1)(ii) and 14e-1(b), the Company believes that the Offer to Purchase, which will describe the precise manner in which the Final Multiple and Alibaba VWAP will be determined, includes a full description of the consideration offered and that the absence of a fixed price or disclosure of the exact number of shares sought in the Offer does not violate Rule 13e-4(d)(1). In this regard, we acknowledge that the Company is not seeking an exemption from the disclosure requirements of Schedule TO. Rather, the Company believes that, if the Staff grants the requested no-action relief under Rule 13e-4(d)(1), the disclosure of the Formula in the Offer to Purchase would be deemed not to be inconsistent with the disclosure requirements of Schedule TO. Furthermore, from a disclosure perspective, the cover page of the Offer to Purchase will state the maximum number of shares of Common Stock that may be purchased in the Offer, and will explain that the exact number of shares of Common Stock to be purchased in the Offer will be based on the purchase price established by the Shareholders determined in accordance with the terms of the Offer disclosed in the Offer.

Section 13(e) of Exchange Act

Section 13(e) of the Exchange Act prohibits an issuer which has a class of equity securities registered under Section 12 of the Exchange Act from purchasing any equity security issued by it if such purchase is in contravention of the rules and regulations promulgated under the Exchange Act by the SEC to define acts and practices which are fraudulent, deceptive or manipulative and to prescribe means reasonably designed to prevent such acts and practices. For the same reasons we discuss above with respect to Rules 13e-4(d)(1), 13e-4(e)(3) and 13e-4(f)(1)(ii), we believe the Offer to Purchase will comply with Section 13(e) and the rules and regulations promulgated thereunder.¹²

Section 14(e) of Exchange Act

Section 14(e) of the Exchange Act prohibits any person from omitting to state any material fact necessary in order to make the statements made in connection with a tender offer, in the light of the circumstances under which they were made, not misleading. For the same reasons

¹² The Company notes that the Offer will not trigger Rule 13e-3 of the Exchange Act, as the Offer is not a “Rule 13e-3 transaction” as defined in Rule 13e-3(a)(3). Although the Company has disclosed that it intends in the future to return substantially all of its cash to its shareholders, subject to retaining sufficient cash to satisfy its obligations and for working capital, the Company will continue to have substantial assets after the Sale Transaction has closed and has no current plans to take any steps that are intended or reasonably likely to produce any of the effects outlined in Rule 13e-3(a)(3)(ii).

we discuss above with respect to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b), we believe that the Offer to Purchase, which describes the precise manner in which the Offer is being conducted, includes a full description of the Formula and the Minimum Consideration, and that the absence of a fixed price or disclosure of the exact number of shares sought in the Offer does not constitute an omission of a material fact that would violate Section 14(e).

Extension of Prior No-Action Letters

The Company believes the Formula, comprised of the Permitted Range and the Alibaba VWAP, combined with the disclosure of the Minimum Consideration and the planned disclosures in the Offer to Purchase and on the Offer website regarding the Formula outlined above, meet the requirements of the Staff's relief for formula pricing mechanisms used in other issuer tender offers.¹³ The Company recognizes, however, that the use of multiples, as opposed to share prices, in the Formula, and the use of the Alibaba VWAP as a component of the Formula may differ from elements of other formula pricing mechanisms. The Company believes that these differences should be viewed as consistent with the rationale for the Staff's relief in other issuer tender offer formula pricing mechanisms.

With regard to the use of multiples, as opposed to share prices, in the Formula, the Company does not believe this different approach is inconsistent with the general structure of other modified Dutch auction issuer tender offers. As in those other offers, the Shareholders will be given specific choices as to the multiples within a specific range of multiples. Although a Shareholder will need to consider the application of the multiples in relation to the trading prices of the Alibaba ADSs when determining the cash amount they would be willing to accept for their tendered shares of Common Stock, the Company believes that the strong correlation between the price of the Common Stock and the price of the ADSs will be clear and understandable. In addition, as mentioned above, Shareholders will have access to information about the Indicative Offer Consideration throughout the Offer and the prices per share to be paid for the Common Stock in the Offer based on the product of the Alibaba VWAP and multiples within the Permitted Range for a minimum of two full business days prior to the Expiration Date. The Company believes these disclosures will provide Shareholders with the information necessary to make this investment decision.

With regard to the use of the Alibaba VWAP as a component of the Formula, the Company notes that the Staff has granted relief in other issuer tender offers that reference another security for purposes of the formula pricing mechanism. For instance, the Staff's letter to *PHH Corporation* (June 12, 2015) provided relief for a formula pricing mechanism that used the trading price of the company's common stock in an offer to repurchase the company's convertible senior notes.¹⁴ The Staff recognized in *PHH Corporation* that the correlation

¹³ See *The Procter & Gamble Company* (Sept. 1, 2016); *Baxter International Inc.* (Apr. 21, 2016); *PHH Corporation* (June 12, 2015); *Kraft Foods Inc.* (July 1, 2008); *Halliburton Company* (Mar. 23, 2007); *Weyerhaeuser Company* (Feb. 23, 2007); and *McDonald's Corporation* (Sept. 27, 2006).

¹⁴ See, e.g., *The Procter & Gamble Company* (Sept. 1, 2016); *The Dow Chemical Company* (Sept. 2, 2015); *Weyerhaeuser Company* (June 26, 2014).

between the trading prices of the company's common stock with the prices of the convertible senior notes supported the rationale for use of the common stock prices in the formula pricing mechanism. The Company believes that a similar rationale exists for using the trading prices of the ADSs for purposes of the Formula. The Company has observed, based on trading data, a strong correlation between the trading price of the Common Stock and the trading prices of the ADSs. In addition, the Company's lack of insight into Alibaba's operations also supports the use of the ADSs as an appropriate component of the Formula.

Finally, the Company believes that investors have become accustomed to the type of real-time pricing information contained in the Formula. Beginning with the Staff's relief in *McDonald's Corporation* (Sept. 27, 2006) over ten years ago, trading markets and investor behavior and expectations have changed dramatically due to the substantially increased penetration of the Internet and online brokerage services among all classes of investors, with investor trading behavior now being driven largely by free, widely available online quotation sources, readily available online brokerage account execution services and free, online "real-time" financial news.

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On the basis of the foregoing, we respectfully request, on behalf of the Company, that the Staff confirm that it will not recommend that the SEC take enforcement action against the Company pursuant to Rules 13e-4(d)(1), 13e-4(e)(3), 13e-4(f)(1)(ii) and 14e-1(b) under the Exchange Act with respect to the requirement that the total number of shares of Common Stock sought in the Offer be specified and the Company's use of the Formula to determine the Offer consideration to be paid per share of Common Stock pursuant to the Offer.

If you have any questions regarding this request or the Offer, please call me at 202-371-7180 or Marc R. Packer at 212-735-2440 at your convenience.

Very truly yours,



Brian V. Breheny

- cc. Arthur Chong, General Counsel, Yahoo! Inc.
- Stephanie Splane, Senior Vice President, Yahoo! Inc.
- Marc R. Packer, Skadden, Arps, Slate, Meagher & Flom LLP