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1934 Act/Rule 14a-8

February 10, 2011

VIA E-MAIL ([shareholderproposals@sec.gov](mailto: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 Jing Zhao  
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 omits the enclosed shareholder proposal (the "**Proposal**") and supporting statement (the "**Supporting Statement**") submitted by Jing Zhao (the "**Proponent**") from the Company's proxy materials for its 2011 Annual Meeting of Shareholders (the "**2011 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 2011 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

**I. BACKGROUND**

The Company shares the Proponent's concern that certain governments do not live up to internationally recognized standards for protecting the free expression and privacy rights of their own citizens. While the duty to protect the human rights of their citizens lies with governments,

the Company recognizes that it, like all corporations, must operate with an awareness of these important issues.

In 2008, in recognition of these issues and because the Company is committed to leading in the efforts to protect and promote free expression and privacy on the Internet, the Company launched the Yahoo! Business & Human Rights Program (the "**BHRP**"). The BHRP brings together a core team of senior professionals from across the Company to integrate the consideration of human rights and free expression issues into its business decision-making. The BHRP implements its mission through a number of core initiatives, including:

- Advocating before the U.S. and foreign governments;
- Creating the Yahoo! Human Rights Fund -- established to provide humanitarian and legal support to political dissidents who have been imprisoned for expressing their views online, as well as assistance for their families;
- Establishing Yahoo! Human Rights Fellowships -- international fellowships at Stanford University and Georgetown University, established by the Company in order to advance scholarship on global values and the Internet;
- Developing an accountability framework, designed to assess the Company's performance in meeting the Company's overall goals and operational steps relating to human rights issues;
- Developing guiding principles and operational guidelines that translate the Company's support for freedom of expression and privacy into practical steps to be followed by employees;
- Conducting Human Rights Impact Assessments, which examine the human rights landscape in prospective markets, evaluate challenges to free expression and privacy that might result from the proposed offering of services, and offer strategic approaches to protect the rights of the Company's users;
- Fostering internal and external stakeholder engagement with users, employees, civil society groups, government and shareholders;
- Creating a website and an e-mail alias to inform internal and external stakeholders about the Company's human rights initiatives and to provide a mechanism to directly engage with stakeholders (<http://humanrights.yahoo.com/> and [bhrp@yahoo-inc.com](mailto:bhrp@yahoo-inc.com)); and
- Launching and hosting the Yahoo! Business & Human Rights Summit (<http://ycorpblog.com/2009/05/07/a-summit-for-human-rights>) -- a stakeholder shared-learning forum about technology and free expression. Participants and invitees include representatives from technology companies, civil society organizations, socially responsible investors, government, employees, and press (<http://www.yhumanrightsblog.com/blog/our-initiatives/business-human-rights-summit/>).

The Company also is a co-founding participant in the Global Network Initiative (the "**GNI**") ([www.globalnetworkinitiative.org](http://www.globalnetworkinitiative.org)) -- a multi-year effort involving an international group of information and communications technology ("**ICT**") companies, human rights organizations, academics, investors, and others. The members of the GNI commit to protecting

freedom of expression and privacy, partnering with others to ensure collective governance and accountability, and promoting the GNI and its objectives throughout the world.

The GNI has produced principles that provide direction and guidance to ICT companies in protecting and advancing freedom of expression and privacy when they encounter laws, regulations and policies that interfere with these fundamental human rights. The Company has also agreed to follow Implementation Guidelines and a Governance, Accountability and Learning Framework that will ensure that the Principles on Freedom of Expression and Privacy are reflected in the business operations of the Company. The Company, along with the other participating companies, will undergo an annual assessment process that begins in 2011.

## **II. SUMMARY OF THE PROPOSAL**

On January 13, 2011, the Company received a letter from the Proponent<sup>1</sup> containing the Proposal for inclusion in the Company's 2011 Proxy Materials. The Proposal is presented as if it is a single proposal, in the form of a resolution entitled "Human Rights Impacts of Yahoo Business." The Proposal requests that the Company formally adopt certain human rights principles relating to its business in China and "other repressive countries," and also requests that the Company review and report to shareholders all policies and actions that might affect human rights observance in countries where it does business. The Proposal reads in relevant part as follows:

"Therefore, be it resolved, that the following human rights principles be formally adopted by Yahoo to guide its business relating to its business in China and other repressive countries:

No information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses. No user information will be provided, and no technological assistance will be made available, that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes. Yahoo will support the efforts to assist users to have access to encryption and other protective technologies and approaches, so that their access and use of the Internet will not be restricted by the Chinese and other repressive authorities. Yahoo will review, report to shareholders and improve all policies and actions (including supervising the abused Yahoo Human Rights Fund) that might affect human rights observance in countries where it does business."

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<sup>1</sup> On December 31, 2010, the Proponent submitted a proposal to the Company (the "**Original Proposal**"). See Exhibit A. On January 10, 2011, the Company notified the Proponent via e-mail and Federal Express of the requirements of Rule 14a-8(c), its view that the Original Proposal failed to meet the requirements of the rule, and the requirement that the deficiency of the Original Proposal (the fact that it contained more than one distinct proposal) be cured within 14 days of receipt of the Company's notice to be eligible for inclusion in the 2011 Proxy Materials. See Exhibit B. On January 13, 2011, the Proponent submitted the current Proposal to the Company. See Exhibit C.

### **III. EXCLUSION OF THE PROPOSAL**

#### **A. Bases for Exclusion of the Proposal**

As discussed more fully below, the Company believes that it may properly omit the Proposal from its 2011 Proxy Materials in reliance on the following paragraphs of Rule 14a-8:

- Rule 14a-8(i)(3), as the Proposal is materially false and misleading;
- Rule 14a-8(i)(7), as the Proposal relates to the Company's ordinary business operations; and
- Rule 14a-8(c) and Rule 14a-8(f), as the Proponent failed to reduce its Proposal to a single proposal within 14 days of receiving notice of such defect from the Company.

#### **B. The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(3), As It Is Materially False and Misleading**

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 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 resolution contained in the proposal is 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 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).

The Staff has consistently allowed for the exclusion of proposals employing a key term that was vague or indefinite. Recently, in *Citigroup Inc.* (February 22, 2010), the Staff concurred that the company could omit a proposal seeking to amend the company's bylaws to establish a board committee on "US Economic Security" under Rule 14a-8(i)(3) as vague and indefinite. Citigroup asserted that the proposal was not only vague regarding whether it required or recommended action, but also the term "US Economic Security" could be defined by any number of macroeconomic factors or economic valuations, making the proposal's objective unclear. *See also NSTAR* (January 5, 2007) (concurring in the omission of a proposal requesting standards of "record keeping of financial records" as inherently vague and indefinite because the

proponent failed to define the terms “record keeping” or “financial records”); *People’s Energy Corporation* (November 23, 2004) (concurring in the omission of a proposal requesting that the company not provide indemnification to directors or officers for acts or omissions involving gross negligence or reckless neglect as inherently vague and indefinite because the term “reckless neglect” was undefined); and *Wendy’s International, Inc.* (February 24, 2006) (concurring in the omission of a proposal requesting reports on “the progress made toward accelerating development of [controlled-atmosphere killing]” as inherently vague and indefinite because the term “accelerating development” was undefined such that the actions required to implement the proposal were unclear).

***1. Terms and phrases material to an understanding of the Proposal are so inherently vague and indefinite as to make the entire Proposal materially misleading***

The Proposal is replete with vague and indefinite terms. It requests that the Company formally adopt human rights principles to guide its business in China and “other repressive countries.” The requested principles should provide, in part, that “[n]o information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses” and that no user information and no technological assistance will be made available “that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes.” The Proposal separately requests that the Company review and improve “all policies and actions” that “might affect human rights observance in countries where it does business.” Neither the Proposal nor the Supporting Statement provides guidance regarding how the Company should evaluate whether information technology products or technologies, or assistance it may provide to governmental authorities, or user information or technological assistance it may make available, or any other “policies and actions” it may take “could contribute to human rights abuses,” “would place individuals at risk of persecution,” or “might affect human rights observance in countries where it does business.” Given the lack of specificity regarding how to implement the principles requested by the Proposal, and the Proposal and Supporting Statement’s failure to define the key terms of the Proposal, any actions taken by the Company in implementing the Proposal, if adopted, may be significantly different from the actions contemplated by the Company’s shareholders in voting on the Proposal.

For example, the Supporting Statement refers to the “misuse of information technology” by the Chinese government and other repressive regimes to monitor electronic communications, to restrict Internet access and use, and to punish Internet users for expressing and exercising their free speech and free association rights. In response to this concern, the Proposal requests that the Company adopt principles that, in part, would prohibit the sale of information technology products or technologies or “assistance” to Chinese authorities and other repressive countries that could “contribute to human rights abuses.” However, there is no indication of the types of information technology products or technologies that the Company currently provides or might in the future provide that may contribute to human rights abuses. Other than a research and development facility, the Company has no direct operations in China. Therefore, it is not clear if the Proposal is intended to mean that all technology or products sold or made available to “China

and other repressive countries” would *per se* be technologies that “could contribute to human rights abuses,” or if only certain products or technologies of the Company “could contribute to human rights abuses.” The Supporting Statement seems to suggest the former view, noting the “misuse of information technology by the Chinese government and other repressive regimes in the world . . . .” Further, the Proposal and Supporting Statement provide no guidance regarding how the Company should monitor for the “misuse of information technology” and, if such misuse is discovered, how it should determine whether such misuse “could contribute to human rights abuses.” A reasonable shareholder might view these statements in the Proposal as imposing a ban on all business activities in “China and other repressive countries”; yet if the Proposal were to be adopted, the Company’s management might reach a fundamentally different conclusion in implementing it. Under similar circumstances in *Yahoo! Inc.* (March 26, 2008), the Staff allowed the Company to exclude a shareholder proposal requesting the establishment of a “new policy” for “doing business in China” with the help of “China’s democratic activists and human/civil rights movement” as inherently vague and indefinite. The phrase “could contribute to human rights abuses” and other terminology used in the current Proposal as discussed below are no less vague and indefinite than the terminology used in the proposal that was the subject of *Yahoo! Inc.* (March 26, 2008).

The Proposal also makes a sweeping demand that the Company not make available any user information or technological assistance “that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes.” However, the Proposal does not offer any criteria or parameters regarding how the Company should assess such risk. Specifically, it is unclear whether this prong of the requested human rights principles would require the Company to operate in direct violation of law if such a violation were to be necessary to provide unfettered access to the Internet for users in countries with laws restricting access for certain purposes.

The other portions of the Proposal are similarly vague and indefinite. No guidance is given on how the Company should identify -- let alone improve, as the Proposal requests -- the “policies and actions” that “might affect human rights observance in countries where it does business.” As an initial matter, the very term “policies and actions” is an exceedingly broad and hard-to-define concept. In *Yahoo! Inc.* (March 26, 2008) (described above), the Staff granted the Company’s request to exclude a proposal that requested “new policy” for “doing business in China” because “‘a policy for doing business’ in any country is an extensive, multi-faceted undertaking, and . . . stockholders will not be able to ascertain with any certainty the nature of the ‘policy’ they are requesting, . . . and any ‘policy’ implemented by the Company could be significantly different from the actions envisioned by the stockholders voting on the Proposal.” In a similar vein, in *Puget Energy, Inc.* (March 7, 2002), the Staff concurred in the exclusion under Rule 14a-8(i)(3) of a proposal requesting that “the board take the necessary steps to implement a policy of improved corporate governance” because it could not be determined from the Proposal whether “improved corporate governance” meant a declassified board, several examples included in the supporting statement, or something else. The current Proposal does not define the “policies and actions” at issue here. The only point of reference offered is the qualifier “might affect human rights observance in countries where [the Company] does business.” But the qualifier itself is inherently vague and indefinite. “Human rights observance” is an “extensive, multi-faceted” concept that can incorporate many things and with respect to

which even like-minded people can differ. The “might affect” construct denotes a possibility of occurrence that may be very remote or weak and a reach that is not bounded by any limitations on scope. Essentially, any policy or action that in some way -- directly or indirectly -- has any effect -- large or small -- on human rights observance in the countries in which the Company does business could come within the sweep of the Proposal’s terms.<sup>2</sup>

Staff precedent amply demonstrates that the use of vague and indefinite terms as those used in the current Proposal are grounds for exclusion under Rule 14a-8(i)(3). In *Berkshire Hathaway Inc.* (March 2, 2007), the Staff concurred with the company’s view that a proposal seeking to restrict the company from investing in securities of any foreign corporation that engages in activities prohibited for U.S. corporations by Executive Order of the President of the United States could be omitted pursuant to Rule 14a-8(i)(3). In that request, the company expressed the view that it was not clear from the text of the proposal and supporting statement what conduct was “prohibited for U.S. corporations by Executive [O]rder of the President” and, therefore, shareholders would be asked to vote on a proposal whose potential scope was not fully known. The same is true of the Proposal and Supporting Statement. There is no way for a reasonable shareholder to understand the scope of the action it would be asking the Company to take unless the shareholder and the Company were provided with the meaning and scope of the key terms and phrases in the Proposal. The current Proposal and Supporting Statement fail to provide such guidance.

**2. *The term “other repressive countries” is so inherently vague and indefinite as to render the entire Proposal materially misleading***

The Proposal requests the adoption of principles prohibiting the Company from selling products or services that “could contribute to human rights abuses” by “authorities in China and other repressive countries.” An understanding of the range of countries to which the phrase “other repressive countries” refers is necessary to understanding the intended scope and meaning of the Proposal. However, neither the Proposal nor the Supporting Statement provides any guidance as to the definition of the phrase “other repressive countries.” In *NSTAR* and *People’s Energy* (both described above), the Staff concurred with the view that undefined, although seemingly simple, phrases like “record keeping of financial records” and “reckless neglect” rendered the proposals in those letters so vague and indefinite that neither the shareholders in voting on the proposals, nor the companies in implementing the proposals (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposals required. Because the Proposal leaves the phrase “other repressive countries” entirely undefined, the Proposal is so vague and indefinite that it is not possible for a shareholder in voting on the Proposal or management in implementing the Proposal (if adopted) to have any understanding of those countries to which the Proposal applies or of the scope of the action sought by the Proposal. Accordingly, any action ultimately taken by the Company upon implementation of the Proposal (if adopted) could be significantly different from the actions envisioned by the shareholders voting on the Proposal.

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<sup>2</sup> It is noteworthy that unlike the other elements of the Proposal that are built around the Company’s dealings in “China and other repressive countries,” the “policies and actions” clause of the Proposal is even broader, reaching all countries in which the Company does business.

### 3. *Conclusion*

As the terms and phrases fundamental to an understanding of the Proposal are inherently vague and indefinite, both when taken individually and as a whole, shareholders voting on the Proposal and the Company in implementing the Proposal (if adopted) would have no reasonable certainty with regard to the actions sought by the Proposal. Further, actions taken by the Company in implementing the Proposal (if adopted) could be significantly different from those expected by shareholders when voting on the Proposal. As such, the Proposal is materially false and misleading and may be excluded in reliance on Rule 14a-8(i)(3).

#### ***C. The Proposal May Be Excluded in Reliance on Rule 14a-8(i)(7), as it Deals With a Matter Relating to the Company's Ordinary Business Operations***

##### ***1. It is the subject matter of the Proposal, not the specific action requested, that dictates the application of Rule 14a-8(i)(7)***

As addressed below, the Proposal relates to the Company's ordinary business operations - specifically, the scope and manner of the products and services the Company offers to its customers and its procedure for protecting customer information. As a threshold matter, however, it is important to note it is the subject matter of the Proposal, not the specific action requested, that dictates the application of Rule 14a-8(i)(7) to the Proposal. In this regard, the Commission stated in 1983:

"In the past, the staff has taken the position that proposals requesting issuers to prepare reports on specific aspects of their business or to form Special Committees to study a segment of their business would not be excludable under rule 14a-8-([i])(7). Because this interpretation raises form over substance and renders the provisions of paragraph ([i])(7) largely a nullity, the Commission has determined to adopt the interpretive change set forth in the Proposing Release. Henceforth, the staff will consider whether the subject matter of the special report or the committee involves a matter of ordinary business; where it does, the proposal will be excludable under rule 14a-8([i])(7)."<sup>3</sup>

Applying the Commission's 1983 statement to the Proposal renders a clear conclusion -- it is the subject matter of the Proposal and not the specific action requested that is to be considered in determining the application of Rule 14a-8(i)(7). As discussed more fully below, it is the Company's view that the subject matter of the Proposal relates to both ordinary and extraordinary business matters and it is the subject matter of the Proposal, rather than the manner of implementation, which is to be considered in determining whether the proposal deals with a matter that relates to the ordinary business operations of the Company. *See Citicorp* (January 8, 1997) (concurring in the exclusion of a proposal seeking a report on the company's policies and procedures to monitor the use of accounts by customers to transfer capital under the predecessor to Rule 14a-8(i)(7) as related to the conduct of the ordinary business operations of the company

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<sup>3</sup> See SEC Release No. 34-20091 (August 16, 1983).



(i.e., monitoring illegal transfers through customer accounts)) and *Bank of America Corp.* (February 21, 2007) (concurring in the exclusion of a proposal requesting a report on policies against the provision of services that enabled capital flight and resulted in tax avoidance under Rule 14a-8(i)(7) as related to ordinary business operations (i.e., the sale of particular services)). The manner of implementing the Proposal, whether it is the issuance of a report or the formation of a special committee as discussed by the Commission, or the adoption of principles as provided in the Proposal, is irrelevant to the application of Rule 14a-8(i)(7) to the Proposal.

2. *The scope of the proposal is not limited to a “significant social policy issue”*

In addition to its request that the Company review and report on its “policies and actions...that might affect human right observances,” including the supervision of the Yahoo! Human Rights Fund, the Proposal requests that the Company adopt principles (i) prohibiting the sale of “information technology products or technologies” to “China and other repressive countries that could contribute to human rights abuses,” (ii) prohibiting the disclosure of user information or the provision of technological assistance that would place individuals at risk of persecution based on access or use of the Internet or other electronic communications, and (iii) requiring the Company to support the provision of “encryption and other protective technologies and approaches” to customers. While, the Company agrees that certain matters involving human rights raise significant policy issues, principles prohibiting the sale of “information technology products or technologies” or requiring the Company to support the provision of “encryption and other protective technologies” clearly relate to the ordinary business matters of determining the manner in which the Company should or should not provide its products and services, determining what products and services to offer, and establishing procedures for protecting customer information. As discussed more fully below, where a shareholder proposal relates partially to a significant policy issue and partially to an ordinary business matter, the Staff has taken the position that such a proposal may be omitted in reliance on the exclusion in Rule 14a-8(i)(7).

A company is permitted to exclude a shareholder proposal from its proxy materials under Rule 14a-8(i)(7) if the proposal deals with a matter relating to the company’s ordinary business operations. In Commission Release No. 34-40018 (May 21, 1998) (the “**1998 Release**”), the Commission stated that the underlying policy of the “ordinary business” exception is “to confine the resolution of ordinary business problems to management and the Board of Directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” The Commission further stated in the 1998 Release that this general policy rests on two central considerations. The first is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The second consideration relates to “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” Importantly, with regard to the first basis for the “ordinary business” matters exception, the Commission also stated that “proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the

day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.”

When a shareholder proposal relates to both ordinary business matters and significant policy issues, the Staff has expressed the view that the proposal may be excluded in its entirety in reliance on Rule 14a-8(i)(7).<sup>4</sup> For instance, in a 2005 letter to *General Electric Company* (Feb. 3, 2005), the Staff expressed the view that a proposal requesting General Electric to issue a statement that provided information relating to the elimination of jobs within General Electric and/or the relocation of U.S.-based jobs by General Electric to foreign countries, as well as any planned job cuts or offshore relocation activities, could be omitted in reliance on Rule 14a-8(i)(7) as relating to General Electric’s ordinary business operations (*i.e.*, management of the workforce). Although it appeared that the shareholder proponent clearly intended the proposal to address the issue of “offshoring” (also called outsourcing or the movement of jobs from the U.S. to foreign countries), the proposal submitted to General Electric was not limited to that issue and encompassed both ordinary business matters and extraordinary business matters and, as such, the Staff agreed with General Electric’s view that the proposal could be omitted. *See also Wal-Mart Stores, Inc.* (Mar. 15, 1999) (concurring in the exclusion of a proposal requesting that the board of directors report on Wal-Mart’s actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, child labor or who fail to comply with laws protecting employees’ rights and describing other matters to be included in the report, because “paragraph 3 of the description of matters to be included in the report relates to ordinary business operations”); *General Electric Company* (Feb. 10, 2000) (concurring in the exclusion of a proposal relating to the discontinuation of an accounting method and use of funds related to an executive compensation program as dealing with both the extraordinary business matter of executive compensation and the ordinary business matter of choice of accounting method).

The Proposal may be omitted for similar reasons here. While the Company recognizes that human rights is an established significant policy issue for purposes of Rule 14a-8, the Proposal may still be excluded because it also relates to such ordinary business matters as the Company’s choice of products and services that it offers and the customers that it serves. Although it appears that the Proponent’s motivation for submitting the Proposal is his concerns regarding human rights abuses and risk of persecution in China and other repressive countries, the Proposal’s language, seeking to limit the types of products and services the Company may offer in the global marketplace and the customers it may serve, relates to matters the Commission and the Staff have recognized as falling within the ordinary business operations of a company.

**3. *The Proposal may be omitted because it relates to the Company’s determinations regarding the manner in which it will offer its products and services***

The Company is a global internet and digital media company that provides a wide range of products and services (including, among many others, Yahoo! Search, Yahoo! Mail, Yahoo!

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<sup>4</sup> In Staff Legal Bulletin 14C (June 28, 2005), the Staff stated that in determining whether the focus of a proposal is a significant policy issue, it considers both the proposal and supporting statement as a whole.

Finance, and Flickr) to hundreds of millions of users every month, in more than 25 languages and in more than 50 countries. As such, the Proposal's request for the Company to adopt principles prohibiting the sale of "information technology products or technologies" to "China and other repressive countries that could contribute to human rights abuses" clearly relates to the Company's ordinary business operations because it involves the Company's decisions to provide its products and services to certain customers. The Company's decisions as to which particular products and services to offer, and to whom such products and services should be offered, are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the ordinary business operations exception under Rule 14a-8(i)(7) and are not proper for shareholder oversight.

The Proposal requests that the Company adopt principles prohibiting the sale of "information technology products or technologies" to "China and other repressive countries that could contribute to human rights abuses." However, as drafted, the Proposal is not solely limited to the significant policy issue of human rights, but instead related to the adoption of a policy barring future business dealings by the Company with "China and other repressive countries." Accordingly, the Proposal seeks to determine which products and services the Company should offer, as well as those particular customers to whom the Company should provide its products and services. Viewing such decisions as ordinary business matters is consistent with the Staff's recent pronouncement that "[p]roposals concerning customer relations or the sale of particular services are generally excludable under Rule 14a-8(i)(7)." For example, in *Bank of America Corporation* (January 22, 2009), the Staff concurred with the view that a proposal requesting the termination of the company's acceptance of matricula consular cards for identification when providing banking services could be omitted in reliance on Rule 14a-8(i)(7) as relating to the ordinary business operations (*i.e.*, the sale of a particular service). In that matter, the supporting statement to that proposal asserted: "Since the U.S. government believes that the matricula consular cards are primarily used by illegal aliens, the Bank should not be accepting such cards as proper identification for its customers. The Bank encourages illegal immigrants to use its services and consequently their residency [by accepting matricula cards as a form of identification]." Despite the proponent's view that Bank of America's actions promoted "illegal activity," the Staff concurred that decisions regarding the types of identification to accept for banking services were ordinary business matters. *See also, e.g., JPMorgan Chase & Co.* (March 12, 2010) (concurring in the omission of a proposal that requested the adoption of a policy barring financing of companies engaged in mountain top removal coal mining despite the proponent's view that the proposal related to the significant social policy issue of the environment); and *Bank of America Corporation* (February 24, 2010) (concurring in the omission of a proposal with the same facts as *JPMorgan Chase & Co.*); *Mirage Resorts, Inc.* (Feb. 18, 1997) (concurring in the omission of a proposal relating to business relationships and extensions of credit).

Consistent with Commission statements and prior Staff precedent, the manner in which the Company provides products and services to its customers, including determinations regarding which particular products and services to offer and to whom such products and services should be offered, is precisely the type of ordinary business matters addressed in Rule 14a-8(i)(7). Because the Proposal and Supporting Statement address ordinary business matters relating to

customer relations and the provision of products and services, the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7).

**4. *The Proposal may be omitted because it relates to the Company's procedures for protecting customer information***

As discussed above, the Company is a global internet and digital media company that provides a wide range of online services to hundreds of millions of users every month, and users entrust personal information to the Company in order for it to provide it with these products and services. The Proposal encroaches on the Company's ordinary business operations of protecting customer information by requiring, among other things, that the Company adopt principles providing that the Company will not provide "user information [or] technological assistance...that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications" and that the Company "support the efforts to assist users to have access to encryption and other protective technologies and approaches."

The Staff has consistently found that shareholder proposals concerning a company's policies and procedures for protecting customer information are excludable pursuant to Rule 14a-8(i)(7) as relating to the company's ordinary business operations. In *Western Union* (March 6, 2009), the company received a shareholder proposal for the adoption of a bylaw establishing a committee to, among other things, review the company's "public policies relating to customer privacy and to delivery of our company's services to lower-wage and/or immigrant workers and other classes of valued customers." The Staff concurred with the view that the company could properly omit the proposal under Rule 14a-8(i)(7) as relating to ordinary business matters. In addition, in *Verizon Communications Inc.* (February 13, 2009), the company received a shareholder proposal seeking a report "examining the effects of the company's Internet network management practices in the context of the significant public policy concerns regarding the public's expectations of privacy and freedom of expression on the Internet." The company argued, and the Staff concurred, that the "development and implementation of policies and procedures for the handling of customer information ... is a core management function and an integral part of Verizon's day-to-day business operations" and the proposal was excludable under Rule 14a-8(i)(7) as it related to the company's procedures for protecting customer information. *See also AT&T Inc.* (February 7, 2008) (concurring in the omission of a proposal requesting a report on policy issues pertaining to disclosure of customer records and the content of customer communications to federal and state agencies).

The current Proposal is much more intrusive on the Company's ordinary business operations than was the case in either *Western Union* or *Verizon Communications*, as it not only seeks a review or report, but it also seeks to affirmatively require the Company to take certain actions relating to the protection of customer information through the adoption of certain principles and actions. The level of privacy provided by the Company to its customers is fundamental to its ordinary business operations, and management is in the best position to determine those steps that are necessary to best protecting customer privacy. Simply put, the current Proposal seeks to subject management to shareholder oversight regarding matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

Consistent with Commission statements and prior Staff precedent, the manner in which the Company protects customer information, including determinations regarding the sort of safeguards to put in place (*e.g.*, “encryption and other protective technologies and approaches”), is precisely the type of ordinary business matters addressed in Rule 14a-8(i)(7).

## 5. *Conclusion*

Based on the foregoing analysis, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2011 Proxy Materials in reliance on Rule 14a-8(i)(7).

### ***D. The Proposal May Be Excluded in Reliance on Rule 14a-8(f), as the Proposal Fails to Comply with the One-Proposal Limitation of Rule 14a-8(c) and the Proponent Did Not Adequately Correct Such Deficiency After Receiving Proper Notice***

Rule 14a-8(c) states that a shareholder may submit no more than one proposal to a company for a particular shareholders’ meeting. It is the Company’s view that the Proposal contains two distinct elements that do not relate to a single, unifying concept -- rendering the Proposal two separate proposals. Specifically, the Proposal seeks to have the Company:

- (i) adopt principles to guide the Company’s business in China and “other repressive countries”; and
- (ii) “review, report to shareholders, and improve all policies and actions...that might affect human rights observance in countries where it does business.”

Rule 14a-8(f) requires a company seeking to exclude a proposal for failing to comply with the one-proposal procedural limitation of Rule 14a-8(c) to notify the proponent of that deficiency within 14 days of receipt of the proposal. The Company received the Original Proposal on December 31, 2010. On January 10, 2011, the Company notified the Proponent via email and delivery by Federal Express of the Original Proposal’s failure to comply with the one-proposal limitation of Rule 14a-8(c).

The notice provided a description of the one-proposal limitation of Rule 14a-8(c) and stated: “In this regard, your submission appears to include two distinct proposals relating to (a) the adoption of human right principles concerning the Company’s ‘information technology products or technologies,’ ‘user information’ and ‘technological assistance’ and support for efforts to provide users with access to encryption and other protective technologies, and (b) the formation of a human rights committee.” The notice indicated that a revised submission meeting the one-proposal requirement was required to be postmarked or submitted electronically no later than 14 days from the date on which the notice was received in order to be eligible for inclusion in the Company’s proxy materials. A copy of Rule 14a-8 was attached to the notice.

If the proponent does not reduce the number of proposals in response to the company’s request under Rule 14a-8(f), the Staff will permit the company to omit all proposals submitted by

the proponent. *See Pfizer Inc.* (February 19, 2007) (concurring that a proposal with multiple elements relating to the election to the board of directors could be omitted in reliance on Rule 14a-8(c)) and *General Motors Corporation* (April 7, 2007) (concurring that a proposal seeking shareholder approval for numerous transactions to restructure the company could be omitted in reliance on Rule 14a-8(c)).

In response to the Company's notice of deficiency that the Original Proposal was in fact two distinct proposals, the Proponent revised the Original Proposal and submitted the Proposal. While the Proponent eliminated the call for establishment of a human rights committee from his Original Proposal, it is the Company's view that the Proponent retained in the Proposal multiple distinct elements relating to separate concepts.

**1. *The Proposal constitutes more than one proposal because it contains multiple distinct elements relating to more than one concept***

The Staff has concurred with the view that a proposal containing multiple elements that relate to more than one concept may be excluded under Rule 14-8(c). *See American Electric Power* (January 2, 2001) (reconsideration denied January 31, 2001). However, as articulated by the Commission, a single proposal made up of several components does not constitute more than one proposal if the components "are closely related and essential to a single well-defined unifying concept." SEC Release No. 34-12999 (November 22, 1976). *See also United Parcel Service, Inc.* (February 20, 2007). Moreover, it is the concepts underlying the elements of the proposal that determine whether there is a single, unifying concept, rather than the proponent's stated purpose for submitting such proposal. *See Torotel, Inc.* (November 1, 2006) (discussed below).

The Company believes that the revisions made to the Proposal in response to the Company's notice were not sufficient to reduce the subject matter of the Proposal to a single, unifying concept; in fact, the Proposal continues to relate to two distinct concepts -- (i) the adoption of specified human rights principles (the "***Principles Element***"), and (ii) a review of and report on the improvement of all policies and actions (specifically including supervision of the Yahoo! Human Rights Fund) that might affect human rights observance (the "***Policies and Actions Element***").

The first element upon which the Supporting Statement is focused -- the Principles Element -- is the perceived failure of the Company's human rights policy to prevent the "misuse" of information technology by the Chinese government and "other repressive regimes" to restrict Internet access and punish Internet users for exercising free speech and free association rights, and it specifically seeks the adoption of principles to address these issues. These principles address, among other things:

- withholding technology, products and assistance from authorities in China and in other repressive countries;
- withholding user information or technological assistance that might place individuals at risk as a result of access or use of the Internet or electronic communications; and

- supporting efforts to provide access to encryption and other protective technologies to counter Chinese and other repressive authorities' restrictions on access and use of the Internet.

The second element of the Proposal -- the Policies and Actions Element -- is, however, distinctly separate from the request to adopt those principles. The Policies and Actions Element requests that the Board undertake a review and "improve all policies and actions (including supervising the Yahoo Human Rights Fund) that might affect human rights observance in countries where it does business" and report on such matters to shareholders. The Policies and Actions Element is larger in geographic scope than the Principles Element -- it relates to all countries in which the Company does business, not just those that could be considered controlled by "repressive regimes." This element also is more expansive in the requested actions -- it requests a review and change to "all policies and actions" in the countries in which the Company does business, not just actions designed to provide unmonitored Internet access to users in countries that could be considered controlled by "repressive regimes." Moreover, the Policies and Actions Element includes the specific instruction that the Board's review should address supervision of the "abused" Yahoo! Human Rights Fund.

The Supporting Statement expresses the Proponent's view that the "Yahoo Human Rights Fund has been politically abused," and the cover letter to the Original Proposal discusses the Proponent's personal knowledge of alleged abuse of the Yahoo! Human Rights Fund by a "noted Chinese human rights activist." The Proposal addresses this issue separately and distinctly from the discussion of the adoption of human rights principles. The Proposal, therefore, does not comply with the one-proposal limitation in Rule 14a-8(c).

Even where multiple elements or components of a proposal relate to some general or central topic, a proposal that contemplates a variety of loosely related actions may be excludable as multiple proposals under Rule 14a-8(c). In *Exxon Mobil Corporation* (March 19, 2002), the Staff concurred with the view that a proposal seeking the inclusion of a slate of nominees larger than the available board seats by a reasonable number and requesting that these additional nominees come from individuals with experience from a variety of shareholder groups (e.g., employees, communities, customers, etc.) could be omitted in reliance on Rule 14a-8(c), as relating to the submission of more than one proposal. In that letter, the proponents appeared to intend the proposal to relate to diversification of the board of directors, but the proposal submitted addressed two distinct concepts -- the number of board nominees and director qualifications. In *Torotel, Inc.* (November 2, 2006), the Staff concurred with the company's view that a proposal calling for the articles of incorporation to be amended to undertake six specific actions could be omitted in reliance on Rule 14a-8(c) despite the proponent's assertion that the proposal related to "one course of action with a singular purpose -- a response to the current [board]'s distinct actions to entrench the [b]oard with power to obtain excessive control over the [c]ompany's decision making and resources, all designed to limit the ability of the [c]ompany's shareholders to undertake corporate actions." See also *Parker-Hannifin Corporation* (Sep. 4, 2009) (concurring in the exclusion of a say-on-pay proposal that would have required an executive pay vote and the establishment of a shareholder communication forum with the compensation committee as involving two separate and distinct matters and thus violating the one-proposal rule); *Fotoball USA, Inc.* (May 6, 1997) (concurring in the exclusion

of a proposal containing somewhat related but distinct requests concerning minimum share ownership for directors, the form of director compensation, and a prohibition on non-employee directors performing other services for the company for compensation).

Similarly, the Proposal focuses on two distinct concepts -- (i) the adoption of specific human rights principles (the Principles Element) and (ii) a review and report to shareholders regarding improvements to all policies and actions (including the supervision of the Yahoo! Human Rights Fund) that might affect human rights observance in countries where the Company does business (the Policies and Actions Element). The adoption of human rights principles sought by the Principles Element is a separate and distinct matter from the Principles and Actions Element of the Proposal that relates broadly to policies and actions and specifically to the supervision of the Yahoo! Human Rights Fund. As such, the inclusion of both the Principles Element and the Policies and Actions Element in the Proposal cause it to violate the one-proposal limitation in Rule 14a-8(c).

## 2. *Conclusion*

The Proposal contains multiple elements that relate to more than one concept, and the Proponent failed to revise the Proposal to comply with the one-proposal limitation in Rule 14a-8(c) within fourteen days of notification of such deficiency. As a result, the Company may properly omit the Proposal in reliance on Rule 14a-8(c).

## IV. *CONCLUSION*

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2011 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 omits the Proposal and Supporting Statement from its 2011 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. Jing Zhao

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



**EXHIBIT A**

160 Maidenhair Ct.  
San Ramon, CA. 94582  
December 31, 2010

Yahoo!  
Corporate Secretary  
701 First Ave.  
Sunnyvale, CA. 94089  
Via post mail, fax (408-349-3400) and Email CorporateSecretary@yahoo-inc.com

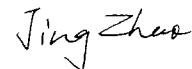
Dear Sir/Madam,

Enclosed are a stockholder proposal for inclusion in proxy materials of the 2011 annual meeting of shareholders and TD Ameritrade letter of my Yahoo stock ownership. I will continuously hold these shares until the 2011 annual meeting of shareholders.

I have first hand knowledge/experience of how Yahoo Human Rights Fund has been politically abused by one "noted Chinese human rights activist" (Yahoo March 30, 2010 letter to me). This "noted Chinese human rights activist" used Yahoo Human Rights Fund as his personal money (he bragged "I am rich now with Yahoo money" and the former Yahoo Human Rights Fund executive director lady told me that every cent must be approved by him); he also used Yahoo Human Rights Fund to force Chinese political prisoner Mr. He's wife to write a letter against another noted Chinese human rights activist Mr. Yang (his rival) in Washington DC.

Should you have any questions, please contact me at 925-984-4909 (phone), 925-718-5037 (fax), or zhao@h-china.org.

Yours truly,



Jing Zhao

Enclosure: Stockholder proposal

TD Ameritrade letter of Jing Zhao's stock ownership

## **RESOLUTION FOR YAHOO 2011 SHAREHOLDERS' MEETING**

### **Human Rights Impacts of Yahoo Business**

Whereas, mindful of the misuse of information technology by the Chinese government and other repressive regimes in the world to monitor electronic communications, to restrict Internet access and use, and to arrest and severely punish Internet users in China and other countries for expressing and exercising their free speech and free association rights, and

Whereas, recognizing the special responsibilities and obligations that these major abuses of human rights place on Yahoo doing business in China and other repressive countries in ways that have contributed to these abuses, and,

Whereas, taking into account the fact that U.S. laws prohibit the involvement and support of U.S. companies in major human rights abuses taking place in foreign nations, and, especially,

Whereas, concerning that Yahoo's management has not improved human rights policy despite Yahoo's public image being severely damaged and Yahoo being financially punished (for example, on May 3<sup>rd</sup> 2010 the World Press Freedom Day, human rights activists rallied in front of Yahoo HQs to protest Yahoo again, -- report from Radio Freedom Asia

<http://www.rfa.org/mandarin/yataibaodao/sf-05042010103545.html>; Yahoo Human Rights Fund has been politically abused),

Therefore, be it resolved, that the following human rights principles be formally adopted by Yahoo to guide its business relating to its business in China and other repressive countries:

No information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses. No user information will be provided, and no technological assistance will be made available, that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes. Yahoo will support the efforts to assist users to have access to encryption and other protective technologies and approaches, so that their access and use of the Internet will not be restricted by the Chinese and other repressive authorities. Yahoo will establish a Human Rights Committee with the responsibility to review and approve all policies and actions that might affect human rights observance in countries where it does business, and to supervise the abused Yahoo Human Rights Fund.



December 31, 2010

Jing Zhao  
160 Maidenhair CT  
San Ramon, CA 94582

Re: TD AMERITRADE Account Ending in 6057

Dear Jing Zhao,

Thank you for allowing me to assist you today. Pursuant to your inquiry, account ending in 6057 has continuously held 200 shares of Yahoo (YHOO) from September 22, 2008 to current. Furthermore, account ending in 6057 has continuously held 300 shares of Yahoo (YHOO) from August 31, 2010 to current.

If you have any questions, please log on to your account and click "Message Center" (under Home) to send us a message. A Client Services representative will respond to your query through your Message Center inbox. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week. For faster service, please enter your account number or UserID when prompted, so that we can direct your call to a representative best suited to service your request.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jennifer Gatlin'.

Jennifer Gatlin  
Research & Resolution  
TD AMERITRADE

This information is furnished as part of a general information service and TD AMERITRADE shall not be liable for any damages arising out of any inaccuracy in the information. Because this information may differ from your TD AMERITRADE monthly statement, you should rely only on the TD AMERITRADE monthly statement as the official record of your TD AMERITRADE account.

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TDA 1712 L 07/10

**EXHIBIT B**



January 10, 2011

*Via Federal Express and Email (zhao@h-china.org)*

Mr. Jing Zhao  
160 Maidenhair Ct.  
San Ramon, CA 94582

Re: Shareholder Proposal

Dear Mr. Zhao:

We received the shareholder proposal you submitted via email and facsimile on December 31, 2010 for inclusion in the proxy materials for the 2011 annual meeting of shareholders of Yahoo! Inc. (the "Company").

Rule 14a-8 under the Securities Exchange Act of 1934 (a copy of which is enclosed) 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. In accordance with Rule 14a-8(f) (Question 6), we hereby notify you of the following procedural deficiency relating to your proposal:

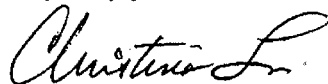
1. Rule 14a-8(c) (Question 3) precludes any one shareholder from submitting more than one proposal to a company for a particular shareholders' meeting. In this regard, your submission appears to include two distinct proposals relating to (a) the adoption of human rights principles concerning the Company's "information technology products or technologies," "user information" and "technological assistance" and support for efforts to provide users with access to encryption and other protective technologies, and (b) the formation of a human rights committee. As such, your submission is required by Rule 14a-8 to be reduced to a single proposal to be considered for inclusion in the Company's proxy materials.

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, your response to the request set forth in this letter must be postmarked, or transmitted electronically, no later than 14 days from the date that you receive this letter.



Please note that the request in this letter is 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.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Christina Lai".

Christina Lai  
Associate General Counsel

## Rule 14a-8 -- Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- a. Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- b. Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
  1. In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
  2. If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - i. The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
    - ii. The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or



## Rule 14a-8 -- Proposals of Security Holders

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

- a. Question 1: What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- b. Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
  1. In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.
  2. If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
    - i. The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or
    - ii. The second way to prove ownership applies only if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or

amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

- A. A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
  - B. Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
  - C. Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.
- c. Question 3: How many proposals may I submit: Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.
  - d. Question 4: How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
  - e. Question 5: What is the deadline for submitting a proposal?
    1. If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q, or in shareholder reports of investment companies under Rule 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
    2. The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
    3. If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
  - f. Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

1. The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under Rule 14a-8 and provide you with a copy under Question 10 below, Rule 14a-8(j).
  2. If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- g. Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- h. Question 8: Must I appear personally at the shareholders' meeting to present the proposal?
1. Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.
  2. If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
  3. If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- i. Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
1. Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

**Note to paragraph (i)(1)**

Depending on the subject matter, some proposals are not considered proper

under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

2. Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

**Note to paragraph (i)(2)**

Note to paragraph (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law could result in a violation of any state or federal law.

3. Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
4. Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
5. Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
6. Absence of power/authority: If the company would lack the power or authority to implement the proposal;
7. Management functions: If the proposal deals with a matter relating to the company's ordinary business operations;
8. Relates to election: If the proposal relates to a nomination or an election for membership on the company's board of directors or analogous governing body or a procedure for such nomination or election;
9. Conflicts with company's proposal: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting.

**Note to paragraph (i)(9)**

Note to paragraph (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

10. Substantially implemented: If the company has already substantially implemented the proposal;
  11. Duplication: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
  12. Resubmissions: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:
    - i. Less than 3% of the vote if proposed once within the preceding 5 calendar years;
    - ii. Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
    - iii. Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and
  13. Specific amount of dividends: If the proposal relates to specific amounts of cash or stock dividends.
- j. Question 10: What procedures must the company follow if it intends to exclude my proposal?
1. If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
  2. The company must file six paper copies of the following:
    - i. The proposal;
    - ii. An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
    - iii. A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

- k. Question 11: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

- l. Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

1. The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
2. The company is not responsible for the contents of your proposal or supporting statement.

- m. Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

1. The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.
2. However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, Rule 14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
3. We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
  - i. If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5

calendar days after the company receives a copy of your revised proposal; or

- ii. In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under Rule 14a-6.

**EXHIBIT C**



160 Maidenhair Ct.  
San Ramon, CA. 94582  
January 13, 2011

Yahoo!  
Corporate Secretary  
701 First Ave.  
Sunnyvale, CA. 94089  
Via fax (408-349-3400) and Email CorporateSecretary@yahoo-inc.com

Dear Sir/Madam:

I received a letter from Ms. Christina Lai, Associate General Counsel, dated on January 10, 2011 via email and FedEx.

The excuse that my "submission appears to include two distinct proposals" in the letter is absurd misinterpretation of relevant rules. It is against the SEC response dated on April 2, 2010 for the almost same proposal I submitted to Yahoo last year (see page 35 of the attached SEC document in email; it can also be found online at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2010/jingzhao040210-14a8.pdf>). The SEC response on page 2 did not mention O'Melveny & Myers LLP's baseless "two proposals" argument at all. I think the SEC has better understanding of Rule 14a-8(f) than Ms. Lai regarding her claim of my proposal's "procedural deficiency."

My proposal is one single proposal. There is no procedural deficiency. However, for the benefit of our company to include the proposal, I am willing to cooperate with you to modify it. Enclosed please find the modified proposal for inclusion in proxy materials of the 2011 annual meeting of shareholders.

Should you have any questions, please contact me at 925-984-4909 (phone), 925-718-5037 (fax), or zhao@h-china.org.

Yours truly,



Jing Zhao

Enclosure: The modified proposal

## **RESOLUTION FOR YAHOO 2011 SHAREHOLDERS' MEETING**

### **Human Rights Impacts of Yahoo Business**

Whereas, mindful of the misuse of information technology by the Chinese government and other repressive regimes in the world to monitor electronic communications, to restrict Internet access and use, and to arrest and severely punish Internet users in China and other countries for expressing and exercising their free speech and free association rights, and

Whereas, recognizing the special responsibilities and obligations that these major abuses of human rights place on Yahoo doing business in China and other repressive countries in ways that have contributed to these abuses, and,

Whereas, taking into account the fact that U.S. laws prohibit the involvement and support of U.S. companies in major human rights abuses taking place in foreign nations, and, especially,

Whereas, concerning that Yahoo's management has not improved human rights policy despite Yahoo's public image being severely damaged and Yahoo being financially punished (for example, on May 3<sup>rd</sup> 2010 the World Press Freedom Day, human rights activists rallied in front of Yahoo HQs to protest Yahoo again; Yahoo Human Rights Fund has been politically abused),

Therefore, be it resolved, that the following human rights principles be formally adopted by Yahoo to guide its business relating to its business in China and other repressive countries:

No information technology products or technologies will be sold, and no assistance will be provided to authorities in China and other repressive countries that could contribute to human rights abuses. No user information will be provided, and no technological assistance will be made available, that would place individuals at risk of persecution based on their access or use of the Internet or electronic communications for free speech and free association purposes. Yahoo will support the efforts to assist users to have access to encryption and other protective technologies and approaches, so that their access and use of the Internet will not be restricted by the Chinese and other repressive authorities. Yahoo will review, report to shareholders and improve all policies and actions (including supervising the abused Yahoo Human Rights Fund) that might affect human rights observance in countries where it does business.