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February 2, 2021

VIA E-MAIL (shareholderproposals@sec.gov)

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

Re: Shareholder Proposal Submitted by James McRitchie and Myra K. Young

Ladies and Gentlemen:

We are writing on behalf of our client, Alphabet Inc., a Delaware corporation ("Alphabet" or the "Company"), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to notify the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude the shareholder proposal (the "Proposal") and supporting statement (the "Supporting Statement") submitted by James McRitchie and Myra K. Young (the "Proponents" and each, the "Proponent"), by a letter dated December 18, 2020, respectively, from the Company's proxy statement for its 2021 annual meeting of shareholders (the "Proxy Statement").

In accordance with Section C of the SEC Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D"), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponents as notice of the Company's intent to omit the Proposal from the Proxy Statement. The Company expects to file its definitive Proxy Statement with the Commission on or about April 23, 2021, and this letter is being filed with the Commission no later than 80 calendar days before that date in accordance with Rule 14a-8(j). Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponents that if the Proponents submit correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal and Supporting Statement are attached hereto as Exhibit A. The Proposal states:

RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC"), contingent on Class B stockholders converting sufficient Class B shares to Class A or Class C to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares.

BASES FOR EXCLUSION

In accordance with Rule 14a-8, we hereby respectfully request that the Staff confirm that no enforcement action will be recommended against the Company if the Proposal and the Supporting Statement are omitted from the Proxy Statement for the following reasons:

1. The Proposal may be omitted pursuant to Rule 14a-8(i)(6) because it is not within the Company's power or authority to implement the Proposal;
2. The Proposal may be omitted pursuant to Rule 14a-8(i)(3) because the Proposal is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules;
3. The Proposal may be omitted pursuant to Rule 14a-8(i)(2) because the Proposal, if implemented, would cause the Company to violate applicable state law, including the Delaware General Corporation Law ("DGCL"); and
4. The Proposal may be omitted pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations.

ANALYSIS

A. Pursuant to Rule 14a-8(i)(6), the Proposal may be omitted because it is not within the Company's power and authority to implement the Proposal.

1. The Proposal may be omitted because the Proposal requires as a condition precedent that the holders of the Company's Class B stock convert their shares to Class A stock and collectively retain less than 40% voting control of the Company, all of which require intervening actions from independent third parties over which the Company has no control.

Pursuant to Rule 14a-8(i)(6), the Company may exclude a shareholder proposal from its proxy materials "if the company would lack the power or authority to implement the proposal." The Staff has acknowledged a proposal may be excluded pursuant to Rule 14a-8(i)(6) where "implementing the proposal would require intervening actions by independent third parties." *Exchange Act Release No. 34-40018* (May 21, 1998) at n.20. The Staff has consistently allowed for the exclusion of proposals that require action from a third party over which a company has no control, or where the company is otherwise not in a position to require or induce such third party (even if they otherwise have a relationship with the company) to execute such action. *See, e.g.*, *eBay Inc.* (March 26, 2008), in which the Staff allowed exclusion of a proposal submitted to eBay, which, as a minority member of a joint venture, lacked the power and authority to cause the majority members of the joint venture to adopt a policy to prohibit the sale of dogs and cats on its website; and *Harsco Corp.* (Feb. 16, 1988), in which the Staff allowed exclusion of a proposal that required action by an entity 50% owned by another company that held the deciding vote in the case of any ties. *See also Firestone Tire & Rubber Co.* (Dec. 31, 1987) (allowing exclusion of a proposal that required action of an entity in which the company was a minority investor).

The Proposal requires as a condition precedent to the Company amending its certificate of incorporation and bylaws to convert the Company to a PBC "Class B stockholders converting sufficient Class B shares to Class A or Class C shares to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B [s]hares." The Proposal makes clear that this condition must be satisfied before the Company can convert to a PBC. The Supporting Statement also emphasizes the necessity of the condition that Class B holders "convert a number of high vote shares to low or no vote shares sufficient to provide meaningful accountability to diversified shareholders," because otherwise it would "limit the efficacy of PBC status, because the [Class B holders'] concentrated ownership means they benefit when the company sacrifices social good for its own profit." The Company itself does not hold any Class B shares, and, as further discussed in the opinion of our Delaware counsel Potter Anderson & Corroon LLP, which is attached hereto as Exhibit B (the "Delaware Counsel Opinion"), nor does it have any power or authority to compel any holders of Class B shares to convert their Class B shares to Class A shares (and, pursuant to the Company's amended and restated certificate of incorporation, Class B shares cannot be converted to Class C shares). The Company's Class B shares are privately held by individual shareholders and, aside from the auto-conversion provisions in the Company's amended and restated certificate of incorporation (pursuant to which shares of Class B stock will automatically convert to Class A stock when Class B shares are transferred or sold under certain conditions), the decision to convert or retain any Class B shares is entirely at the discretion of the holders of such Class B shares.

The Staff has distinguished proposals that merely request that a company ask for the cooperation of a third party (*see Exchange Act Release No. 34-40018* (May 21, 1998) at n.20, citing *Northeast Utility System* (November 7, 1996)). However, the condition set forth in the Proposal is unlike the situation in Northeast Utility System, in that the Proposal does *not* request the Company to ask the Class B holders to convert their shares; rather, it assumes the conversion by Class B holders will occur as a condition precedent to the Company converting to a PBC. Such an action is not one for which the Company can even request cooperation from holders of Class B stock, since, as described in the Delaware Counsel Opinion, the decision to convert Class B stock to Class A stock is an investment decision by an individual stockholder that a company has no power or authority to influence or dictate.

Even if Class B holders independently converted their Class B shares, the conversion alone would not be sufficient to "ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares" in accordance with the Proposal. Depending on the number of Class B and other shares continued to be held by Class B holders, the Class B holders collectively may still hold more than 40% voting control even after conversion of some (or all) of their Class B shares, if they decide not to sell their shares. Even if Class B holders initially go under the threshold upon conversion of their Class B shares, which as discussed would be out of the Company's power and authority to ensure, there is no guarantee that they would not at some point in the future accumulate enough Class A shares to exceed 40% voting control — and the Proposal assumes a sustained lack of concentrated ownership after the initial conversion of Class B shares. Class B holders may decide to purchase more Class A shares and maintain or increase their voting control percentage, and outside of the parameters of the Company's insider trading policy and accompanying trading restrictions, the Company has no power or authority to control, at any time, who owns or purchases voting stock of the Company and in what amounts, such that a balance can be always maintained to ensure a diversified shareholder base and no concentrated ownership, as per the Proposal. Indeed, the Company would not even be able to know or calculate with any certainty how much voting control Class B holders as a "class" would hold in the aggregate at any given time. Millions of the Company's Class A and Class C stock are traded on a daily basis,[1] and while the Company can track the ownership of its directors and officers, there are Class B holders who are not officers and directors, and any such Class B holders who are less than 5% holders may not file Schedule 13D or 13G filings or otherwise notify the Company of their total holdings that would enable the Company to track Class B holder voting control in the aggregate.

Therefore, because the Company has no power or authority to (1) compel the current holders of the Company's Class B stock to convert their Class B shares to Class A shares, and (2) control or dictate who buys and accumulates voting stock of the company to be able to ensure at all times that there is a diversified shareholder base and no concentrated ownership such that current holders of the Company's Class B stock do not and will continue not to beneficially own or control 60% of the Company's voting power, this Proposal may be excluded under Rule 14a-8(i)(6) because its implementation is conditioned on intervening actions by independent third parties that the Company cannot influence or control.

2. The Proposal may be omitted because the Board of Directors cannot unilaterally amend the Company's certificate of incorporation to implement the Proposal without the

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[1] Alphabet, Inc. Class A Common Stock, Nasdaq, https://www.nasdaq.com/market-activity/stocks/googl; Alphabet, Inc. Class C Capital Stock, Nasdaq, https://www nasdaq.com/market-activity/stocks/goog.

approval by the Company's shareholders, and the Company cannot control or ensure that its shareholders will give such approval.

The Staff has also concurred on numerous occasions to exclude proposals where a company cannot ensure that the actions required to implement the proposal would occur, particularly where such actions require approval by shareholders. For example, in *Xerox Corp.* (Feb. 23, 2004), a proposal was submitted requesting that the company's board of directors "amend the certificate of incorporation to reinstate the rights of the shareholders to take action by written consent and to call special meetings." The Staff allowed for the exclusion of a proposal, since "the board of directors of the Company does not have the power or authority to amend the Company's certificate of incorporation, absent the subsequent approval thereof by the Company's shareholders," and Xerox could not ensure that such shareholder approval would occur. The Staff also granted a no-action request to exclude the same proposal in *Burlington Resources Inc.* (Feb. 7, 2003) and other no-action requests to exclude similar proposals requiring shareholder approval (for example, *I-many, Inc.* (Apr. 4, 2003) (excluded on the basis that the company and its board had no power to enforce shareholder election of any particular person as a director), and *Staten Island Bancorp, Inc.* (Mar. 21, 2000) (excluded on the basis that the board had no power to implement a sale or merger without shareholder approval, which it could not control or ensure would happen).

Similar to *Xerox* and the other no-action requests discussed above, the Proposal requests "our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation." As further discussed in the Delaware Counsel Opinion, Section 242(b) of the DGCL requires that any amendment to a company's certificate of incorporation (with very limited exception) must be implemented by (1) the board of directors adopting a resolution setting forth the amendment proposed and declaring its advisability and (2) the stockholders of the company voting to approve the amendment at either a special meeting of stockholders or an annual meeting of stockholders. An amendment to the Company's certificate of incorporation to convert the Company to a PBC would not fall under either of the exceptions set forth in Section 242(b)(1) of the DGCL,[2] and so would require approval by the Company's shareholders. Much like in Xerox, the Company's Board of Directors "does not have the power or authority to amend the Company's certificate of incorporation, absent the subsequent approval thereof by the Company's shareholders." The Proposal itself acknowledges that any amendments to the certificate of incorporation must be made with the approval of the Company's shareholders. However, as is well established under applicable law and further explained in the Delaware Counsel Opinion, a company has no power or authority over its shareholders to direct or otherwise control shareholders' vote on any such

[2] The exceptions named in Section 242 of the DGCL are (1) to change the corporate name of the corporation and (2) to delete (i) such provisions of the original certificate of incorporation which named the incorporator or incorporators, the initial board of directors and the original subscribers for shares, and (ii) such provisions contained in any amendment to the certificate of incorporation as were necessary to effect a change, exchange, reclassification, subdivision, combination or cancellation of stock, if such change, exchange, reclassification, subdivision, combination or cancellation has become effective.

matters. As such, the Company and its Board of Directors cannot implement this Proposal without the intervening action of its shareholders, over whom the Company and its Board of Directors have no power or authority to dictate or control any voting decisions. Accordingly, this Proposal may be excluded under Rule 14a-8(i)(6) because it cannot be implemented without shareholder approval, which is outside of the Company's control to ensure it will occur.

3. The Proposal may be omitted because implementation of the Proposal would violate certain provisions of the DGCL, and the Company as a corporation incorporated in Delaware does not have the power or authority to act in a manner that violates applicable state laws.

The Staff has a well-established history of applying Rule 14a-8(i)(6) to a shareholder proposal that, if adopted by a company's shareholders, would cause the company to violate applicable state law. *See, e.g.*, *RTI Biologics, Inc.* (Feb. 6, 2012); *Abbott Laboratories* (Feb. 2, 2011); *Ball Corp.* (Jan. 25, 2010); *NVR, Inc.* (Feb. 17, 2009); *Schering-Plough Corp.* (Mar. 27, 2008); *The Boeing Co.* (Feb. 19, 2008); *AT&T Inc.* (Feb. 19, 2008); *Noble Corp.* (Jan. 19, 2007); *SBC Communications Inc.* (Jan. 11, 2004). If the Company's Board of Directors unilaterally amended the certificate of incorporation to convert the Company to a PBC and did not seek shareholder approval of such amendment, such act would be a violation of Section 242 of the DGCL. As discussed further in subsection C below, the implementation of this Proposal would also violate other applicable sections of the DGCL and would force directors to act in a way that would constitute a breach of their fiduciary duties and duties of care and loyalty to the Company. Therefore, this Proposal may be properly omitted pursuant to Rule 14a-8(i)(6) because the Company would need to violate numerous sections of the DGCL in order to fully implement the Proposal.

B. Under Rule 14a-8(i)(3), the Proposal may be omitted because it is impermissibly vague, indefinite and susceptible to various interpretations so as to be inherently misleading in violation of the proxy rules.

Pursuant to Rule 14a-8(i)(3), the Company may exclude a shareholder proposal from its proxy materials "if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials." The Staff has interpreted Rule 14a-8(i)(3) to include shareholder proposals that are vague and indefinite, and the Staff has consistently concurred with companies excluding shareholder proposals on the basis that "neither the stockholders 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." *SEC Staff Legal Bulletin No. 14B* (Sept. 15, 2004). A proposal is sufficiently vague and indefinite to justify exclusion where a company and its shareholders might interpret the proposal differently, such that "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." *Fuqua Industries, Inc.* (Mar. 12, 1991). Such proposals may be determined to be vague or indefinite because the scope of the work to be done is unclear, making it impossible for a company to determine how to adequately comply with the proposal. For example, a proposal that requested a company's board of directors amend the company's governing documents "… to set standards of corporate governance" was excluded because the phrase "standards of corporate governance" was too broad in scope for the company to know with certainty how to proceed. *Alaska Air Group, Inc.* (Apr. 11, 2007). Additionally, proposals that do not provide sufficient context or explanation, and "lack[] sufficient description about the changes, actions or ideas for the company and its shareholders to consider" may also be excluded as being too vague and indefinite. *Apple Inc.* (Dec. 6, 2019) (allowing a proposal to be excluded because the request that the company "improve guiding principles of executive compensation" lacked adequate explanation as to what constitutes "guiding principles of executive compensation"); *see also eBay Inc.* (Apr. 10, 2019) (permitting the company to exclude the proposal because there was not sufficient description as to what "reform" its executive compensation committee meant).

Finally, the Staff has allowed proposals to be excluded if a proposal fails to define key terms or otherwise fails to provide guidance on the implementation of the proposal. *See, e.g., Baxter International, Inc.* (Jan. 10, 2013) (allowing exclusion of a proposal requesting no acceleration in vesting of any future equity pay to senior executives in the event of a change of control because the proposal did not adequately define and explain, among other things, "change of control", such that "neither stockholders nor the company would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *General Electric Company* (January 21, 2011) (permitting the company to exclude a proposal to modify the company's incentive compensation program to provide more long-term incentives because the proposal was impermissibly vague in explaining how the program would work in practice, including the financial metrics that would be used in implementing the proposal); *International Paper Co.* (February 3, 2011) (allowing exclusion of a proposal to adopt a policy requiring senior executives to retain a significant percentage of stock acquired through equity compensation programs because it did not sufficiently define "executive pay rights"); *Verizon Communications Inc.* (February 21, 2008) (allowing for the exclusion of a proposal where the proposal failed to define critical terms "Industry Peer Group" and "relevant time period"); *Prudential Financial Inc.* (February 16, 2007) (allowing for the exclusion of a proposal where the proposal was vague on the meaning of critical terms "management controlled programs" and "senior management incentive compensation programs" and where it was unclear how the company would implement the proposal); and *Wendy's International Inc.* (February 24, 2006) (allowing the company to exclude a proposal because the term "accelerating development" was found to be impermissibly vague).

The Proposal states that the Company should convert to a "public benefit corporation" pursuant to Section 362 of the DGCL. Section 362(a) of the DGCL requires a public benefit corporation to "(1) Identify within its statement of business or purpose pursuant to § 102(a)(3) of this title *one or more specific public benefits* to be promoted by the corporation; and (2) State within its heading that it is a public benefit corporation" (emphasis added) in its certificate of incorporation. As defined under Section 362(b) of the DGCL, "public benefit" means "a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature." The Supporting Statement notes that "PBC directors must 'balance' interests of shareholders, stakeholders, and specified benefits, allowing the corporation to protect communities, even when it reduces financial return to shareholders in the long run." The Proposal and Supporting Statement do not identify or provide any guidance, description or explanation as to what such specified benefits are that should be included in the Company's certificate of incorporation. They also do not expand on what "protect[ing] communities" means and how the Company could or should do so. Therefore, any action(s) taken by the Company in implementing the Proposal could differ significantly from the intentions and expectations of the shareholders voting on the Proposal. As with the precedent cases above, the term "public benefit" is "sweeping in its scope" (*Alaska Air Group*) and renders it impossible for the Company to ascertain with any accuracy what benefits to include and what initiatives to implement to comply with the Proposal.

As the Proponents, the Company's shareholders and the general public may be well aware, the Company has already undertaken numerous short-term and long-term projects and initiatives that could be considered "public benefits" as defined in the DGCL and may be viewed as "protect[ing] communities." Just to name a few, Alphabet has been carbon neutral since 2007 and is not only the world's largest corporate purchaser of renewable energy, but has also committed nearly $2.5 billion in renewable energy projects with a total combined capacity of 3.7 GW since 2010. In 2016, Google partnered with the humanitarian nonprofit Pact to help eradicate child labor in the Democratic Republic of Congo's tin and cobalt industries and helped to fund the Mines to Markets program, which aims to eliminate child labor in the DRC mines with a comprehensive plan of wide-ranging interventions and outreach programs. In 2019, Alphabet pledged $1 billion and created an investment fund to build affordable housing in the Bay Area, with which it expects to support the construction of around 24,000 new affordable housing units. In 2020, Alphabet issued $5.75 billion worth of sustainability bonds, the largest green/sustainability bond issuance by any company in history, to fund projects in various different areas, including energy efficiency, green buildings, clean transportation, affordable housing, racial equity and COVID-19 response relief. In June 2020, Alphabet announced a $175+ million economic opportunity package to support Black business owners, startup founders, job seekers and developers, in addition to YouTube's $100 million fund to amplify Black creators and artists. However, it is unclear whether any of these initiatives and projects would be in line with what shareholders expect when voting for the Proposal, given the lack of context and information provided in the Proposal and Supporting Statement. Without this information, the Company and its many shareholders could have vastly different ideas about what public benefits to identify and prioritize, which and how many communities should be protected, how such communities should be protected, what protecting communities means, how the Company's progress should be measured, and who would be the best person to measure that progress.

The Supporting Statement further claims that "the Company's capacity to link people around the globe provides potential to contribute to religious persecution, put democracy at risk, and undermine vaccination. Threats to freedom, democratic principles, and public health could be prioritized at a PBC, even if it sacrifices return." However, these are not identified as specific public benefits, and are not accompanied by any explanation or guidance as to how the Company should prioritize and frame any of these concepts as *specified* public benefits. Concepts of "religious persecution," "freedom," "democratic principles," "public health" and "undermining vaccinations" are all extraordinarily vague and broad in scope. It would be impossible for the Company to know with any certainty what shareholders have in mind and expect from the company upon implementing this Proposal in furtherance of promoting "freedom," "democratic principles" and "public health," what exactly the Company should do to combat these issues, and how to measure success. In fact, it would be a fallacy to even assume as a base premise that every shareholder will have a uniform set of expectations and vision of what each of these broad concepts will look like when manifested upon implementation of the Proposal. The Company has operations all over the world, shareholders of the Company come from many experiences and backgrounds, and the Company's users live in and embrace cultures from every corner of the world. Every one of these stakeholders will have different ideas of what these terms mean and what their implementation should look like. Reasonable minds can, and often do, differ over a plethora of issues under these overarching umbrella terms—how does one promote freedom and in what form does such freedom take; where should one prioritize promoting such freedom; to which groups and from whom should the Company promote freedom; in what way and using what initiatives and efforts should such promotion of freedom manifest—each of the Company's shareholders will have different ideas and priorities about what they want and expect from this, which makes it all the more impossible for the Company to know how to proceed in implementing this Proposal. Even with seemingly more specific items such as "undermining vaccination" are too "sweeping in scope": there is an absolute lack of clarity of what it means to "undermin[e] vaccination" and what and how the Company can mitigate it. Shareholders themselves will disagree on whether the Company even should be promoting vaccination, much less the specifics of how to do it (which could range from putting out some advertisements to changing its business to a pharmaceutical company that develops vaccinations).

Because the Proposal does not adequately define the "specified public benefits" the Company as a PBC should pursue, neither the voting shareholders nor the Company would be able to determine with reasonable certainty what actions or measures the proposal requires. Further, because the Proposal does not provide metrics that the Company should use to measure success, any action taken by the Company should the Proposal be adopted could very well differ significantly from the actions envisioned by the shareholders voting on such Proposal. Thus, the Proposal is impermissibly vague and indefinite and should be excluded.

C. Under Rule 14a-8(i)(2), the Proposal may be omitted because its implementation would cause the Company to violate state law.

A Company may omit a shareholder proposal from its proxy materials under Rule 14a-8(i)(2) if the "proposal would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject." The Company is a Delaware corporation, and cannot implement the Proposal without violating certain provisions of the Delaware General Corporation Law (the "DGCL").

The Proposal "request[s] our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC"), contingent on Class B stockholders converting sufficient Class B shares to Class A or Class C to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares." As discussed in subsection B above and as further set forth in the

Delaware Counsel Opinion, Section 362(a) of the DGCL requires a public benefit corporation to "identify within its statement of business or purpose pursuant to §102(a)(3) of this title *one or more specific public benefits* to be promoted by the corporation" (emphasis added) in its certificate of incorporation. Neither the Proposal nor the Supporting Statement reference or identify any specific public benefits, and they also do not otherwise provide any guidance as to what specific public benefits should be identified. As discussed in subsection B above, the Company cannot adequately implement this Proposal because it has no way of determining with any certainty that any specific public benefit that it identifies would be consistent with the intentions and expectations of the shareholders who might vote for this Proposal. However, as explained further in the Delaware Counsel Opinion, the Company cannot lawfully become a PBC without identifying "one or more specific public benefits" in its certificate of incorporation, meaning that implementing the Proposal as it is written (i.e., without identifying any specific public benefits as is consistent with the Proposal) would mean that the Company would be violating the requirements of Section 362(a) of the DGCL.

Furthermore, as discussed at length in the Delaware Counsel Opinion, pursuant to §141(a) of the DGCL, corporations must be "managed by or under the direction of" a board of directors, who must act in the best interest of the corporation and its shareholders. Directors are subject to fiduciary duties, duties of care and loyalty, and are required to "exercise their managerial authority on an informed basis in the good faith pursuit of maximizing the value of the corporation for the benefit of its residual claimants, *viz.*, the stockholders." Virtus Capital L.P. v. Eastman Chem. Co., No. 9808-VCL, 2015 WL 580553, at *16 (Del. Ch. Feb. 11, 2015). To satisfy these duties, directors must take an active role throughout decision-making processes and make careful, informed decisions, including having enough information to make the required decision, devoting sufficient time to review such information, and obtaining the advice of experts, if useful. *See* Guth v. Loft, Inc., 23 Del.Ch. 255 [5 A.2d 503, 510] (1939); Aronson v. Lewis, 473 A.2d 805, 817 (Del. 1984); Krim v. ProNet, Inc., 744 A.2d 523, 527 (Del. Chanc. Ct. 1999) (citing Guth 23 Del.Ch. 255); cited in Reliance Secs. Litig., 91 F.Supp 2d 706, 732 (D. Del. 2000).

The Proposal does not condition the request for the Company to convert to a PBC on first running an analysis or preparing a report detailing the benefits and drawbacks of being a PBC to see if converting to such a structure would be in the best interest of the Company. Instead, the Proposal requests the Company's Board of Directors to amend the certificate of incorporation and bylaws to convert the Company to a PBC, regardless of whether such a decision is in the best interest of the Company and its shareholders. The Company and its Board of Directors has not yet had the opportunity to run any such analysis or retain any independent consultant to prepare any such report. To implement this Proposal without having done such due diligence and without regard to the results of any such diligence that is done—especially if a determination is made that the conversion to a PBC would *not* be in the best interests of the Company and its shareholders—would be a direct violation of our directors' fiduciary duties to the Company and a violation of well-established Delaware law. Thus, as explained further in the Delaware Counsel Opinion, the Company's Board of Directors cannot lawfully approve any action, including converting the Company to a PBC, if it determines that such action would not be in the best interests of the Company and its shareholders.

Other shareholder proposals submitted to other companies have taken this critical first step to ensure that the board is acting in accordance with the duties it owes to the Company (e.g., Wells Fargo & Company received a shareholder proposal in 2020 requesting that their board "commission an independent study, utilizing outside experts, with a report and recommendations to shareholders by October 2020, to assess the feasibility of taking the necessary actions to become a Delaware Public Benefit Corporation…"). *Wells Fargo & Company* (Feb. 2, 2020). This Proposal does not take this first step to provide the Board of Directors with any flexibility to carry out its fiduciary duty and duty of care in implementing the Proposal, and instead would force the Board of Directors to act in violation of the DGCL and such duties owed to the Company if passed by shareholders. Because the Proposal demands that the directors act without regard to whether such action would actually be in the best interests of the Company and its shareholders, this Proposal, if implemented, would cause the Company and its Board of Directors to violate Delaware state law.

D. Under Rule 14a-8(i)(7), the Proposal may be omitted because it concerns the Company's ordinary business operations.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." The underlying policy of the ordinary business exclusion 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 shareholder meeting." *Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals*, [1998 Transfer Binder] *Fed. Sec. L. Rep. (CCH) ¶ 86,018, at 80,539* (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission described two "central considerations" for the ordinary business exclusion: 1) certain 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," and 2) the degree to which the proposal seeks to 'micromanage' 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." *Id.* at 86,017-18 (footnote omitted).

The Staff has agreed in past no-action requests that a company's corporate structure, and making any changes to it, is a matter of ordinary business. In *The Goldman Sachs Group, Inc.* (Jan. 26, 2017), the Staff allowed the company to exclude a shareholder proposal that requested the company prepare and publish a study of the benefits and drawbacks of reorganizing as a bank holding company because the proposal related to the company's ordinary business operations. *See also The Reader's Digest Association Inc.* (Aug. 18, 1998) (allowing a company to exclude a shareholder proposal that requested the board of directors retain an investment bank to evaluate reorganization options, divestment of company assets, and any strategic acquisitions). The Proposal requires that the Company amend its certificate of incorporation, and if necessary, amend its bylaws to convert the Company from a for-profit Delaware corporation to a PBC. Corporate structures are chosen via informed decisions by management, which take into account a variety of factors such as tax and liability implications, effects on talent searches and hiring decisions, requirements of various regulatory regimes and potential impacts of public perception, all of which are impacted by the various jurisdictions in which a company operates. Similar to Goldman Sachs and The Reader's Digest Association, this Proposal requests the Company reorganize the Company's corporate structure, an act that is a matter of ordinary business operations and should be left to management, with oversight from the Board of Directors, to consider and make decisions.

In the 1998 Release, the Commission determined 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. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers." Accordingly, the Staff has taken the view that proposals that affect a company's relationship with certain constituencies are excludable under Rule 14a-8(i)(7). For example:

- Vendors: *See Continental Airlines, Inc.* (Mar. 25, 2009) (permitting exclusion of a proposal requesting a policy on contract repair stations as relating to "decisions relating to vendor relationships"); *Foot Locker, Inc.* (Mar. 3, 2017) (allowing the company to exclude a proposal requesting a report outlining the steps the company was taking, or could take, to monitor the use of subcontractors by the company's overseas apparel suppliers).
- Employees: *See Walmart, Inc.* (Apr. 8, 2019) (allowing the company to exclude a proposal requesting a report evaluating discrimination risk from the company's policies and practices for hourly workers taking medical leave, noting that the proposal "relates generally to the [c]ompany's management of its workforce"); *Exxon Mobile Corporation* (Feb. 16, 2010) (excluding a proposal eliminating remuneration for any one of Management in an amount $500,000 per year, noting "[p]roposals that concern general employee compensation matters are generally excludable under rule 14a-8(i)(7)").
- Customers and Advertisers: *See Wal-Mart Stores, Inc. (Porter)* (Mar. 26, 2010) (agreeing that the Company can exclude a proposal to adopt a policy that all products and services of the company offered for sale by the company be made in the United States of America, with the Staff noting that "[p]roposals concerning the sale of particular products are generally excludable under rule 14a-8(i)(7)"). Here, the Proposal would impermissibly restrict the products and services the Company offers, advertising space and search functions, much like the proposal in Wal-Mart impermissibly restricted the products and services of Wal-Mart. *See also Ford Motor Co.* (Feb. 13. 2013) (allowing the company to exclude a proposal requesting removal of dealers that provided poor customer service, noting that "[p]roposals concerning customer relations are generally excludable under rule 14a-8(i)(7)").

Converting the Company to a PBC requires more than just amending the Company's certificate of incorporation to include some specified public benefit purposes. Such a change in corporate structure of the Company also necessitates large-scale and long-term changes to the Company's business, finance, human resource and human capital management, research and development ("R&D"), controls and numerous other functions to ensure compliance with the Company's public benefit purpose(s) as a PBC. To name a few examples:

- The Company would be forced to reevaluate and possibly renegotiate the terms of its contracts with vendors, employees, customers, and advertisers. For example, the Company would need to review all of its business relationships, contracts and arrangements with third parties to determine whether any could conflict with the specific public benefit purposes of the Company. If any are found, the Company may need to renegotiate or terminate its relationship with such third party if an alignment with the Company's public benefit purposes cannot be achieved.
- The Company may need to limit Search, Youtube, Maps, Cloud, Gmail and other products and services and restrict certain users' use of such products and services, if such products and services were being used for purposes that conflict with the Company's public benefit purposes. Such restrictions would negatively impact the Company's customers and overall business operations, as well as the Company's short- and long-term profitability.
- Any such restrictions discussed above are also antithetical to the ethos of the Company as it currently stands, and the Company's ethos and culture of information sharing and transparency is one of the draws and competitive advantages for hiring and retaining talent. If this ethos and culture changes into one that employees do not connect with or appreciate, then they may decide to leave and join another Company, which would impact not just our hiring and retention but the quality of our R&D and products and services and the overall growth and development of our Company.
- The Company's shareholders will likely be negatively impacted in regards to their investment in the Company. The Supporting Statement is clear that, as a PBC, the Company's "directors must 'balance' interests of shareholders, stakeholders and specified benefits, allowing the corporation to protect communities, even when it reduces financial return to shareholders in the long run." The Company's current shareholders have enjoyed immense returns on the long-term value of our stock: the Company's stock price averaged around $250 per share back in 2010, and is now trading at approximately $1900 per share. The Proposal acknowledges that converting to a PBC will force the Company to act in ways that may "sacrifice return" for the Company's shareholders, which in turn may negatively impact both our current shareholder base and potential new investors.
- The Company would be forced to review and reevaluate its relationship with the Company's many subsidiaries and investment portfolio companies. Currently, because of the Company's for-profit model, the Company has the necessary cash on hand to invest in, acquire and support the growth of businesses that display great innovation and potential for life-changing and life-saving products and services, enabling them to continue to innovate and create even while not making much, if any, profit. If the corporate structure were changed, the Company may be forced to re-evaluate each of its existing

subsidiaries and investment portfolio companies and decide whether to retain, reorganize or dispose of them, which would alter the fundamental nature and identity of the Company as it currently stands.

- The Company currently leads numerous environmental and social projects and initiatives to promote sustainability and support communities and underserved groups around the world. Some of these may not be covered under an identified specific public benefit purpose if the Company converts to a PBC, and the conversion may significantly impact the Company's available surplus capital to fund the amount of these kinds of projects, even if they do fall within the confines of the specified public benefit purposes. The impact on the Company's available surplus capital would also require decisions to be made about how and where to allocate such capital—and such decisions could promote public benefit projects at the cost of the Company's growth and innovation in the R&D and products and services space, or vice versa.

None of these functions of the Company should be subject to shareholder oversight and control, as they are unique and complex in nature and require often confidential or highly sensitive and constantly developing information that shareholders would not know and judgment calls that shareholders are not well-positioned or qualified to make. Management considers many factors when deciding the best corporate structure and all of the related decisions that trickle down from any given corporate structure, and it is neither appropriate nor practicable to involve shareholders in such decision-making of everyday ordinary business operations. These are all areas that would directly and indirectly impact the Company's relationships with its vendors, business partners, employees, customers and other parties, and are reminiscent of those that the Staff has explicitly allowed for exclusion, as outlined above.

E. The Proponents should not be given the opportunity to cure these defects by revising the Proposal, because any revisions required to cure these defects would not be minor, insubstantial changes.

In addition to the reasons discussed in subsections A through D above in regards to why the Proposal should be excluded, the Proponents should not be given an opportunity to revise the Proposal, as any revisions needed to resolve these bases for exclusion would be substantial and material changes. The Company recognizes that the Staff has a "long-standing practice of issuing no-action responses that permit stockholders to make revisions that are minor in nature and do not alter the substance of the proposal." *Staff Legal Bulletin No. 14* (CF) (July 13, 2001) ("SLB No. 14"). However, this guidance in SLB No. 14 is meant for proposals that "generally comply with the substantive requirements of the rule, but contain some relatively minor defects that are easily corrected." That is not the case here. As discussed in this letter, the defects described in each basis for exclusion in subsections A through D above are neither minor in nature nor easily corrected with minor revisions.

Short of wholesale deleting the condition that the Company's Class B holders convert their shares and relinquish sufficient control of the Company such that at least 60% of voting control rests in non-Class B stock holders, there is no way to revise this condition such that the Company would have power and authority to control the investment decisions of its shareholders without violating securities laws, as discussed in subsection A above. The Proposal is premised on this condition and treats it as a critical and necessary step for the PBC conversion to be effective, and removing this condition would require significant rewriting of both the Proposal and the Supporting Statement. Furthermore, the shareholder approval requirement is dictated by law under the DGCL but is also something that is not within the Company's power or authority to ensure it occurs. Any revision that could cure this defect would not be a minor change to the Proposal, given the nature of the requirement and the independent parties whose actions are required to implement it.

As outlined in subsection B above, the vagueness and "sweeping scope" of the definition of "public benefit" cannot be corrected by minor revisions that "do not alter the substance of the proposal." As discussed in subsection B above, the Proposal does not identify any specified public benefits and does not provide any relevant explanation or guidance on pinpointing public benefits. Any revisions addressing the vagueness and the lack of an essential element required by the DGCL would essentially create a new proposal that changes the nature of the requested change in corporate structure, and would also run the risk of further constituting "micromanaging" the Company.

Any revisions that could cure the violation of state law defect discussed in subsection C above would require submitting essentially a second proposal (e.g., one requesting an analysis or independent report to be done regarding the feasibility of converting the Company into a PBC and whether it would be in the Company's and its shareholders' best interests to do so). Any such or similar revisions would not only be impermissible under Rule 14a-8(c), which allows only one proposal to be submitted by each shareholder, but also constitute substantial and material rewriting of the Proposal.

As discussed in subsection D, the proposal requests for a change to the corporate structure, which is a fundamental decision that should be left to management, with oversight by the Board of Directors, as an ordinary business decision. Furthermore, such a change to the corporate structure necessitates broad-sweeping decisions and consequential actions at both Alphabet and at each of its subsidiaries, impacting the Company's business operations, financial performance, employees and other human capital resources, advertising and other business relationships, and current environmental, social and sustainability projects and initiatives, all of which is considered micromanagement of the Company. To revise the Proposal such that the ordinary business defect is cured would essentially require a rewriting of the entire Proposal into a new Proposal, which would not be a minor change contemplated by SLB No. 14 as permissible.

Any revision to the Proposal that would effectively correct any of the defects discussed herein would not constitute a "relatively minor" revision as contemplated by SLB No. 14. Therefore, corrective revisions are impermissible under the terms of SLB No. 14 and the Proposal should not be given the opportunity to be so revised.

* * * * * *

Conclusion

By copy of this letter, the Proponents are being notified that for the reasons set forth herein, the Company intends to omit the Proposal and Supporting Statement from its Proxy Statement. We respectfully request that the Staff confirm that it will not recommend any enforcement action if the Company omits the Proposal and Supporting Statement from its Proxy Statement. If we can be of assistance in this matter, please do not hesitate to call me.

Sincerely,

Jeffrey D. Karpf

Cc: John Chevedden, James McRitchie and Myra K. Young

Enclosures:

Exhibit A – Proponents' Proposal and Supporting Statement

Exhibit B – Delaware Counsel Opinion

Exhibit A

Proponents' Proposal and Supporting Statement

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

9295 Yorkship Court
Elk Grove, CA 95758

Corporate Secretary
Alphabet Inc. (GOOGL)
1600 Amphitheatre Parkway
Mountain View CA 94043
PH: 650-253-0000
FX: 650-253-0001
Corporate Secretary <corporatesecretary@google.com>
<corporatesecretary@abc.xyz>

REVISED 18 DEC 2020

Dear Corporate Secretary,

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to request to **Increase Diversity of Director Nominees**.

The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden *** to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. *We are open to negotiating possible changes to the proposal. We expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to* *** *it may not be necessary for you to request such evidence of ownership.*

Sincerely, J. McRitchie

James McRitchie — December 15, 2020
Date

Myra K. Young

Myra K. Young — December 15, 2020
Date

cc: Thu-An Pham <tapham@google.com>
PH: 650-253-1035
FX: 650-887-2552
Nancy Walker <nwalker@google.com>
Valentina Margulis <valya@google.com>

James McRitchie and Myra K. Young, CorpGov.net

[GOOGL: Rule 14a-8 Proposal December 18, 2020]
[This line and any line above it – *Not* for publication.]
Proposal 4* - Transition to Public Benefit Corporation

RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC"), contingent on Class B stockholders converting sufficient Class B shares to Class A or Class C to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares.

SUPPORTING STATEMENT: Estimates state the Company has more than 4 billion users.[1] It has eight applications with more than one billion users.[2] This reach creates unique power, and power demands accountability. But our governance is structured to produce profits without accountability.

As a conventional corporation, the duties of Company directors emphasize shareholders, not stakeholders (except to the extent they create value for shareholders). In contrast, PBC directors must "balance" interests of shareholders, stakeholders, and specified benefits,[3] allowing the corporation to protect communities, even when it reduces financial return to shareholders in the long run.

This distinction is critical. The Company's capacity to link people around the globe provides potential to contribute to religious persecution,[4] put democracy at risk,[5] and undermine vaccination.[6] Threats to freedom, democratic principles, and public health could be prioritized at a PBC, even if it sacrifices return.

These threats matter to the vast majority of our diversified shareholders: as of September 2020, the top five holders of the Company's shares were mutual fund companies with indexed or otherwise broadly diversified portfolios. Diversified shareholders lose when companies harm the economy, because the value of diversified portfolios rises and falls with GDP.[7] While the Company may profit by ignoring costs it inflicts on society, its diversified shareholders ultimately internalize those costs. (They may also be personally at risk from them.)

Shareholders deserve an opportunity to vote on an amendment that will align our governance with shareholder interests and the global community in order to create meaningful accountability.

However, our multiclass structure, which vests control in individuals with wealth concentrated in our stock, could limit the efficacy of PBC status, because their concentrated ownership means they benefit when the company sacrifices social good for its own profit. Thus, the board resolution should provide that the

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[1] https://review42.com/google-statistics-and-facts/#:~:text=Google's%20search%20engine%20market%20share,over%20one%20billion%20active%20users
[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/1652044/000165204420000008/goog10-k2019.htm#s8845EA78D2E95963AFCF7E636F3B28E0
[3] 8 Del C, §365.
[4] https://www.businessinsider.com/china-likely-laid-out-how-google-can-help-persecute-uighur-minority-2018-10
[5] https://www.thedailybeast.com/cheats/2016/11/16/google-ceo-fake-news-could-ve-swung-election
[6] https://www.thedailybeast.com/you-wont-believe-how-easy-it-is-to-buy-anti-vaxx-ads-on-google-and-twitter
[7] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; cf. https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

amendment will only be effected if these individuals convert a number of high vote shares to low or no vote shares sufficient to provide meaningful accountability to diversified shareholders.

Vote to Transition to Public Benefit Corporation– Proposal [4*]

[This line and any below, *except for possible footnotes in the proposal*, are *not* for publication]
Number 4* to be assigned by Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference: SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

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

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***

Exhibit B

Delaware Counsel Opinion

Potter Anderson Corroon LLP

1313 North Market Street
P.O. Box 951
Wilmington, DE 19801- 0951
302 984 6000
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February 1, 2021

Alphabet Inc.
1600 Amphitheatre Parkway
Mountain View, California 94043

Re: Stockholder Proposal Submitted by James McRitchie and Myra K. Young

Ladies and Gentlemen:

You have requested our opinion as to certain matters of Delaware law in connection with your request that the staff of the Securities and Exchange Commission (the "Commission") grant no-action relief to Alphabet Inc., a Delaware corporation ("Alphabet" or the "Company"), with respect to a stockholder proposal and a statement in support thereof (the "Proposal") submitted by James McRitchie and Myra K. Young on or about December 18, 2020. The proposal, if adopted would require the Board of Directors of Alphabet to takes steps necessary to amend the Amended and Restated Certificate of Incorporation of Alphabet (the "Charter") and, if necessary, the Amended and Restated Bylaws of Alphabet (the "Bylaws"), to convert Alphabet into a public benefit corporation (a "PBC"), contingent on the holders of Class B Common Stock (as defined in the Charter) converting sufficient shares of Class B Common Stock to shares of Class A Common Stock or Class C Capital Stock (as such terms are defined in the Charter) to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Common Stock. The Proposal is more fully set forth in the attached Exhibit A.

In connection with your request for our opinion, we have reviewed the following documents, all of which were supplied by the Company or were obtained from publicly available records: (i) the Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on October 2, 2015; (ii) the Amended and Restated Bylaws of Alphabet, publicly filed by the Company on October 27, 2020; and (iii) the Proposal.

With respect to the foregoing documents, we have assumed (i) the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies or forms, and (ii) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinions as expressed herein. For the purposes of rendering this opinion, we have conducted no independent factual investigation of our own, but have relied exclusively upon the documents listed above, the statements and information set forth therein and the additional matters related or assumed therein, all of which we have assumed to be true, complete and accurate in all material respects.

Based upon and subject to the foregoing, and upon such legal authorities as we have deemed relevant, and limited in all respects to matters of Delaware corporate law, for the reasons set forth below, it is our opinion that the Proposal, if adopted and implemented, would violate Delaware law.

<u>The Proposal</u>

The Proposal reads as follows:

> RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC"), contingent on Class B stockholders converting sufficient Class B shares to Class A or Class C to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares.

<u>Discussion</u>

The Proposal requests that the Board of Directors of the Company (the "Board") take action to amend the Charter and, if necessary, the Bylaws, to convert Alphabet into a PBC. Pursuant a Subchapter XV of the General Corporation Law of the State of Delaware (the "DGCL"), a corporation may be organized as a "public benefit corporation," which is defined to mean a "for-profit corporation organized under and subject to the requirements of [the DGCL] that is intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner." 8 *Del. C.* § 362(a). Section 362(b) of the DGCL defines "public benefit" to mean "a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature." 8 *Del. C.* § 362(b).

To form a Delaware PBC or convert an existing Delaware corporation to a PBC through an amendment to the corporation's certificate of incorporation, the PBC's certificate of incorporation must, among other things, "identify within its statement of business or purpose … one or more specific public benefits to be promoted by the corporation[.]" 8 *Del. C.* § 362(a)(1). Thus, Section 362(a) of the DGCL requires a PBC to identify in its certificate of incorporation the *specific* public benefit or public benefits the corporation will promote. Critically, the specific public benefit or public benefits so identified in a PBC's certificate of incorporation informs the duties of a PBC's directors. Pursuant to Section 365(a) of the DGCL, a PBC's board of directors is required to manage or direct the business and affairs of the PBC in a manner that "balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and *the specific public benefit or public benefits identified in its certificate of incorporation.*" 8 *Del. C.* § 365(a) (emphasis added). Likewise, the public benefit or public benefits so identified in the PBC's certificate of incorporation is directly related to the PBC's obligation to provide to its stockholders certain periodic statements. Pursuant to Section 366 of the DGCL, a PBC is required to provide to its stockholders, no less than biennially, a statement "as to the corporation's promotion of the public benefit or public benefits *identified in the certificate of incorporation* and of the best interests of those materially affected by the corporation's conduct." 8 *Del. C.* § 366(b) (emphasis added).

The Proposal requests that the Board take steps necessary to, among other things, amend the Charter to "become a public benefit corporation." However, neither the Proposal nor the supporting statement identify a *specific public benefit or public benefits* to be promoted by the Corporation – a critical requirement of the DGCL. As noted above, in order for a Delaware corporation to be organized as a PBC under Subchapter XV of the DGCL, the corporation's certificate of incorporation *must* identify one or more *specific* public benefits to be promoted by the corporation. The specific public benefit so identified therein will, in turn, inform the directors' duties in managing the PBC in a manner that complies with the balancing requirements set forth in Section 365(a) of the DGCL, as well as the PBC's obligation to provide periodic statements to its stockholders regarding the PBC's promotion of the identified public benefits in accordance with the requirements of Section 366 of the DGCL. If the Company were to implement the Proposal as drafted, the Company would be omitting from its certificate of incorporation a provision required by Delaware law, in violation of Section 362(a)(1) of the DGCL.

In addition to the foregoing, the Proposal is an improper attempt by stockholders to exercise management authority that is expressly reserved to the Board by the DGCL and the Charter and interferes with the discharge of the Board's fiduciary obligations. By requiring the Board to take steps to amend the Charter without giving the Board the discretion to evaluate whether it would be in the best interests of the Company and its stockholders to convert the Company to a PBC, the Proposal represents an improper attempt by stockholders to exercise management authority that is expressly reserved to the Board. Section 141(a) of the DGCL provides the board of directors of a Delaware corporation, and not the stockholders, with the express statutory authority to manage the business and affairs of the corporation. Absent an express provision in a corporation's certificate of incorporation to the contrary, "[t]he business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors…" 8 *Del. C.* § 141(a). Consistent with this statutory delegation of authority, the Charter provides that "the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors." Charter at Article VI, Section 1. Thus, the Board possesses the full power and authority to manage the business and affairs of the Company under Section 141(a) of the DGCL.

The principle that the directors, rather than the stockholders, manage the business and affairs of a Delaware corporation is a long-standing principle of Delaware law. *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000) ("A cardinal precept of the General Corporation Law of the State of Delaware is that directors, rather than shareholders, manage the business and affairs of the corporation."); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998) ("One of the most basic tenets of Delaware corporate law is that the board of directors has the ultimate responsibility for managing the business and affairs of a corporation."). As a result, the stockholders of a Delaware corporation cannot require the directors to make decisions on matters with respect to which authority is specifically conferred on the directors by statute or the certificate of incorporation, including adopting, amending or repealing certain provisions of the corporation's certificate of incorporation.

Likewise, stockholders cannot substantially limit a board's freedom to make decisions on matters of management policy. *See, e.g. Abercrombie v. Davies,* 123 A.2d 893 (Del. Ch. 1956), *rev'd on other grounds,* 130 A.2d 338 (Del. 1957) (holding that a stockholders' agreement was invalid because it had the effect of restricting the ability of the directors to exercise their best judgment in making decisions on matters of management policy). Although stockholders may agree to a course of action, they may not commit directors to proceed with such course of action as it may force the directors to vote contrary to their own best judgment and/or in a manner that would be inconsistent with the exercise of the directors' fiduciary duties. *Id.* at 900; *CA, Inc. v. AFSCME Emps. Pension Plan*, 953 A.2d 227, 231 (Del. 2008) (finding a stockholder-proposed bylaw invalid because it would "violate the prohibition, which our decisions have derived from Section 141(a), against contractual arrangements that commit the board of directors to a course of action that would preclude them from fully discharging their fiduciary duties").

If implemented, the Proposal could require the Board to take actions that violated their fiduciary duties of care and loyalty. In carrying out their obligation to manage a corporation's business and affairs, the directors of a Delaware corporation have an unyielding fiduciary duty to act in the best interests of the corporation and its stockholders. *See Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985); *Guth v. Loft, Inc.*, 5 A.2d 503, 510 (Del. 1939). That unyielding fiduciary duty includes a fiduciary duty of care and a fiduciary duty of loyalty. The duty of care obligates directors to inform themselves of all material information reasonably available to them before making a business decision and, having so informed themselves, to act with the requisite care in making such decision. *See Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 367 (Del. 1993); *Moran v. Household Int'l, Inc.*, 490 A.2d 1059, 1075 (Del. Ch. 1985). The fiduciary duty of loyalty (including the obligation to act in good faith) requires, among other things, that corporate directors act in a manner they believe in good faith to be in the best interests of the corporation and its stockholders. *See Aronson*, 473 A.2d at 812; *Van Gorkom*, 488 A.2d at 872. In carrying out their fiduciary duties of care and loyalty, directors must determine in the exercise of their good faith business judgment whether a proposed course of action would or would not be in the best interests of the corporation. *See ACE Ltd. v. Capital Re Corp.*, 747 A.2d 95, 103 (Del. Ch. 1999). *See also McAllister v. Kallop*, 1995 WL 462210, at *24 (Del. Ch. July 28, 1995) (holding that contract restricting exercise of fiduciary duties by limiting director's ability to make independent, good faith determination regarding appropriate corporate action is invalid), *aff'd*, 678 A.2d 526 (Del. 1996); *Chapin v. Benwood Foundation, Inc.*, 402 A.2d 1205 (Del. Ch. 1979) (holding that agreement by which board committed years in advance to fill particular board vacancy with certain named person, irrespective of circumstances that existed at time vacancy occurred, and thus effectively relinquishing duty of directors to exercise their best judgment on management matters, was unenforceable), *aff'd sub nom.*, *Harrison v. Chapin*, 415 A.2d 1068 (Del. 1980).

More recently, the Delaware Supreme Court found that a proposed bylaw committing a board of directors to a course of action that would preclude them from fully discharging their fiduciary obligations is a violation of Delaware law. *CA, Inc.*, 953 A.2d 227. In that case, a proposed bylaw would have required the board of directors to reimburse stockholders' expenses in connection with nominating candidates in a contested election of directors. The Supreme Court found that the bylaw would "prevent directors from exercising their full managerial power in circumstances where their fiduciary duties would otherwise require them to deny reimbursement to a dissident slate." *Id.* at 239. Moreover, the Supreme Court emphasized, "the Bylaw mandate[d] reimbursement of election expenses in circumstances that a proper application of fiduciary principles *could* preclude." *Id.* at 240 (emphasis added). In reaching its conclusion, the Supreme Court noted that "the Bylaw contain[ed] no language or provision that would reserve to [the corporation's] directors their full power to exercise their fiduciary duty to decide whether or not it would be appropriate, in a specific case, to award reimbursement at all." *Id.* (citing *Malone v.*

Brincat, 772 A.2d 5, 10 (Del. 1998) ("Although the fiduciary duty of a Delaware director is unremitting, the exact course of conduct that must be charted to properly discharge that responsibility will change in the specific context of the action the director is taking with regard to either the corporation or its stockholders.")).

The Proposal would require the Board to act in an area committed to the business judgment of the Board by statute and case law – the decision whether to adopt and recommend an amendment to the Company's Charter. The conversion of the Company from a traditional corporation to a PBC would represent a radical transformation of the nature of the Company. The Proposal, if implemented, would improperly infringe upon the right and obligation of the Board to manage the business and affairs of the Company, and to act to propose the conversion of the Company to a PBC *only if* the directors believe that course of action to be in the best interests of the Company and its stockholders. Such a result, without affording the Board the opportunity to conduct an analysis of the costs and benefits of such a change or retain counsel to opine as to advantages and disadvantages of such a conversion would run afoul of the Board's fiduciary obligations and Delaware law.

Finally, we note that, to the extent that the Proposal seeks to require the Board to approve an amendment to the Charter to convert the Company to a PBC, the Proposal, if implemented, would violate Section 242(b) of the DGCL. Section 242(b) of the DGCL sets forth a two-step process to effect an amendment to a corporation's certificate of incorporation: first the Board must adopt a resolution setting forth the amendment proposed, declaring its advisability, and providing for its submission to stockholders. Second, after the Board acts, the stockholders entitled to vote thereon must approve the amendment by the vote of a majority of the outstanding stock. 8 *Del. C.* § 242(b)(1). Delaware case law emphasizes the importance that the courts attach to the strict two-part process: "it is significant that two discrete corporate events must occur, in precise sequence, to amend the certificate of incorporation under 8 *Del. C.* § 242.… The stockholders may not act without prior board action. Likewise, the board may not act unilaterally without stockholder approval." *Williams v. Geier*, 671 A.2d 1368, 1381 (Del. 1996). Moreover, and as noted above, Section 242(b) of the DGCL expressly requires that the board of directors declare the advisability of any amendment to a corporation's certificate of incorporation prior to submission thereof to its stockholders for approval. 8 *Del. C.* § 242(b)(1). If a board of directors does not, in the good faith exercise its business judgment, determine that an amendment is advisable, the amendment cannot be submitted to stockholders for approval. Consistent with the foregoing discussion regarding the infringement on the Alphabet directors' exercise of their fiduciary obligations, the Proposal seeks to require that the Board make a specific determination as to the advisability of the proposed amendment to the Charter, which determination is reserved by statute and applicable Delaware common law to the discretion of the Board.

Likewise, if the Proposal would require the Board to unilaterally approve an amendment to the Charter in violation of Delaware law, it is also our opinion that the Company does not have the power and authority to implement the Proposal. As noted above, the Board, acting alone, may not approve an amendment to the Charter "to become a public benefit corporation." Any such amendment first must be adopted and declared advisable by the Board and then submitted to the stockholders for their approval, which the Company cannot guarantee. This second step would effectively require intervening action on the part of independent third parties – a requisite number of the Company's stockholders – over which the Company has no control. Under Delaware law, "[s]tockholders in Delaware corporations have a right to control and vote their shares in their own interest. They are limited only by any fiduciary duty owed to other stockholders. It is not objectionable that their motives may be for personal profit, or determined by whim or caprice, so long as they violate no duty owed other shareholders." *Bershad v. Curtiss-Wright Corp.*, 535 A.2d 840, 845 (Del. 1987); *see also Williams*, 671 A.2d at 1380–81.

Further, to the extent that the Proposal seeks to require the Board to cause the conversion of outstanding shares of Class B Common Stock to shares of Class A Common Stock or Class C Capital Stock, the Proposal, if implemented, would violate Delaware law and the Company lacks the power and authority to implement the same. Section 151(e) of the DGCL provides as follows:

> Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments *as shall be stated in the certificate of incorporation* or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

8 *Del. C.* § 151(e) (emphasis added). Article IV, Section 2(f) of the Charter sets forth, among other things, the terms pursuant to which shares of Class B Common Stock may be converted into shares of Class A Common Stock. Subject to the terms of the Charter, shares of Class B Common Stock shall be converted into Class A Common Stock (i) at the option of the holder thereof, (ii) automatically upon the consummation of certain Transfers (as such term is defined in the Charter), and (iii) automatically upon the death of the applicable holder of Class B Common Stock. Charter at Article IV, Section 2(f)(ii-iv). The Charter does not permit the Company or the Board to unilaterally cause the holders of Class B Common Stock to convert such shares to Class A Common Stock or Class C Capital Stock.

This opinion is rendered solely for your benefit in connection with the foregoing and may not be relied upon by any other person or entity or be furnished or quoted to any person or entity for any purpose, without our prior written consent; provided that this opinion may be furnished to or filed with the Commission in connection with your no-action request relating to the Proposal.

Sincerely yours,

POTTER ANDERSON & CORROON LLP

Exhibit A

Proposal

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

9295 Yorkship Court
Elk Grove, CA 95758

Corporate Secretary
Alphabet Inc. (GOOGL)
1600 Amphitheatre Parkway
Mountain View CA 94043
PH: 650-253-0000
FX: 650-253-0001
Corporate Secretary <corporatesecretary@google.com>
<corporatesecretary@abc.xyz>

RECEIVED 18 DEC 2020

Dear Corporate Secretary,

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to request to **Increase Diversity of Director Nominees**.

The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year. We pledge to continue to hold stock until after the date of the next shareholder meeting. Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including its submission, negotiations and/or modification, and presentation at the forthcoming shareholder meeting. Please direct all future communications regarding our rule 14a-8 proposal to John Chevedden *** to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. *We are open to negotiating possible changes to the proposal. We expect to forward a broker letter soon. Therefore, if you simply acknowledge my proposal in an email message to* *** *it may not be necessary for you to request such evidence of ownership.*

Sincerely,

J. McRitchie
James McRitchie — December 15, 2020
Date

Myra K. Young
Myra K. Young — December 15, 2020
Date

cc: Thu-An Pham <tapham@google.com>
PH: 650-253-1035
FX: 650-887-2552
Nancy Walker <nwalker@google.com>
Valentina Margulis <valya@google.com>

James McRitchie and Myra K. Young, CorpGov.net

[GOOGL: Rule 14a-8 Proposal December 18, 2020]
[This line and any line above it – *Not* for publication.]
Proposal 4* - Transition to Public Benefit Corporation

RESOLVED: Shareholders request our Board of Directors take steps necessary to amend our certificate of incorporation and, if necessary, bylaws (including presenting such amendments to the shareholders for approval) to become a public benefit corporation (a "PBC"), contingent on Class B stockholders converting sufficient Class B shares to Class A or Class C to ensure that at least 60% of the Company's voting power is not beneficially owned or controlled by the holders of Class B Shares.

SUPPORTING STATEMENT: Estimates state the Company has more than 4 billion users.[1] It has eight applications with more than one billion users.[2] This reach creates unique power, and power demands accountability. But our governance is structured to produce profits without accountability.

As a conventional corporation, the duties of Company directors emphasize shareholders, not stakeholders (except to the extent they create value for shareholders). In contrast, PBC directors must "balance" interests of shareholders, stakeholders, and specified benefits,[3] allowing the corporation to protect communities, even when it reduces financial return to shareholders in the long run.

This distinction is critical. The Company's capacity to link people around the globe provides potential to contribute to religious persecution,[4] put democracy at risk,[5] and undermine vaccination.[6] Threats to freedom, democratic principles, and public health could be prioritized at a PBC, even if it sacrifices return.

These threats matter to the vast majority of our diversified shareholders: as of September 2020, the top five holders of the Company's shares were mutual fund companies with indexed or otherwise broadly diversified portfolios. Diversified shareholders lose when companies harm the economy, because the value of diversified portfolios rises and falls with GDP.[7] While the Company may profit by ignoring costs it inflicts on society, its diversified shareholders ultimately internalize those costs. (They may also be personally at risk from them.)

Shareholders deserve an opportunity to vote on an amendment that will align our governance with shareholder interests and the global community in order to create meaningful accountability.

However, our multiclass structure, which vests control in individuals with wealth concentrated in our stock, could limit the efficacy of PBC status, because their concentrated ownership means they benefit when the company sacrifices social good for its own profit. Thus, the board resolution should provide that the

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[1] https://review42.com/google-statistics-and-facts/#:~:text=Google's%20search%20engine%20market%20share,over%20one%20billion%20active%20users
[2] https://www.sec.gov/ix?doc=/Archives/edgar/data/1652044/000165204420000008/goog10-k2019.htm#s8845EA78D2E95963AFCF7E636F3B28E0
[3] 8 Del C, §365.
[4] https://www.businessinsider.com/china-likely-laid-out-how-google-can-help-persecute-uighur-minority-2018-10
[5] https://www.thedailybeast.com/cheats/2016/11/16/google-ceo-fake-news-could-ve-swung-election
[6] https://www.thedailybeast.com/you-wont-believe-how-easy-it-is-to-buy-anti-vaxx-ads-on-google-and-twitter
[7] See *Universal Ownership: Why Environmental Externalities Matter to Institutional Investors,* Appendix IV (demonstrating linear relationship between GDP and a diversified portfolio) available at https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf; cf. https://www.advisorperspectives.com/dshort/updates/2020/11/05/market-cap-to-gdp-an-updated-look-at-the-buffett-valuation-indicator (total market capitalization to GDP "is probably the best single measure of where valuations stand at any given moment") (quoting Warren Buffet).

amendment will only be effected if these individuals convert a number of high vote shares to low or no vote shares sufficient to provide meaningful accountability to diversified shareholders.

Vote to Transition to Public Benefit Corporation– Proposal [4*]

[This line and any below, *except for possible footnotes in the proposal*, are *not* for publication]
Number 4* to be assigned by Company

The graphic above is intended to be published with the rule 14a-8 proposal.
The graphic would be the same size as the largest management graphic (and accompanying bold or highlighted management text with a graphic) or any highlighted management executive summary used in conjunction with a management proposal or a rule 14a-8 shareholder proposal in the 2021 proxy.

The proponent is willing to discuss the in unison elimination of both shareholder graphic and management graphic in the proxy in regard to specific proposals.

Reference: SEC Staff Legal Bulletin No. 14I (CF)
[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

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

See also Sun Microsystems, Inc. (July 21, 2005)

The stock supporting this proposal will be held until after the annual meeting and the proposal will be presented at the annual meeting. Please acknowledge this proposal promptly by email ***