SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

PATRICIA SPAIN, Derivatively on behalf of Yahoo! Inc.,

Plaintiff,

vs.

MARISSA MAYER, DAVID FILO, ERIC BRANDT, MAYNARD WEBB, JR., TOR BRAHAM, CATHERINE FRIEDMAN, EDDY HARTENSTEIN, RICHARD HILL, THOMAS MCINERNEY, JANE E. SHAW, JEFFREY SMITH, RONALD S. BELL, KENNETH A. GOLDMAN, SUSAN M. JAMES, H. LEE SCOTT, JR., VERIZON COMMUNICATIONS, INC.,

Defendants,

-and-

YAHOO! INC.,

Nominal Defendant.

Case No.: 17CV307054

**ORDER AFTER HEARINGS ON JUNE 6, 2017**

**Motion by Plaintiff Patricia Spain for Preliminary Injunction; Motions to Seal**

**This Order was issued conditionally under seal to the parties and lodged on June 6, 2017 by the Court. Pursuant to California Rules of Court, Rule 2.551(b)(3)(B), the Clerk will remove the Order from its sealed envelope and place it in the public file unless a motion or application to seal the record is filed within 10 days from the date the record was lodged under seal.**

The above-entitled matter came on regularly for hearings on Tuesday, June 6, 2017 at 10:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A **confidential** tentative ruling was issued by the Court on June 5, 2017. The appearances are as stated in the record. The Court, having reviewed and considered the written submission of all parties, having heard and considered the oral argument of counsel, and being fully advised, orders that the tentative ruling be adopted and incorporated herein as the Order of the Court, as follows:

This is one of three related shareholder and derivative actions arising from the pending sale of the operating assets of Yahoo! Inc. to Verizon Communications Inc. Before the Court is plaintiff Patricia Spain's motion for a preliminary injunction delaying the shareholder vote on the sale until certain disclosures are made to the shareholders. Yahoo opposes the motion and has filed an amendment to the definitive proxy statement providing supplemental disclosures directed to several of the issues raised by plaintiff. Yahoo also moves to seal certain documents filed in connection with the motion for preliminary injunction, as well as documents lodged by plaintiffs in connection with an informal discovery conference.

Individual defendant Ronald S. Bell moves to join in Yahoo's opposition to the motion for preliminary injunction, and that request is GRANTED.

I. Factual and Procedural Background

Verizon has agreed to acquire Yahoo's operating assets for $4.48 billion, a price which reflects a $350 million reduction tied to previously undisclosed security issues Yahoo has experienced since 2013. (First Amended Complaint ("FAC"), ¶ 2.) The transaction is conditioned on a shareholder vote. (*Id.* at ¶ 4.) In addition to the sale itself, shareholders must vote on associated "golden parachute" payments to individual defendants including Yahoo's CEO, Marissa Mayer. (*Id.* at ¶ 4.) The definitive proxy connected with the upcoming vote was filed on April 24, 2017. (*Id.* at ¶ 4.) As described below, plaintiff alleges in her verified FAC

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that the proxy omits material information regarding conflicts that tainted the sale process, Yahoo executives' prior knowledge of major security breaches, and other issues.[1]

The shareholder vote is currently scheduled for June 8, 2017, and the agreement governing the sale permits Verizon to terminate the transaction if it fails to close by July 24.

A. The Events Alleged in the FAC

Plaintiff alleges that the transaction at issue was first announced on July 23, 2016. (FAC, ¶ 5.) It was originally governed by a stock purchase agreement representing, among other things, that there had been no security breaches of Yahoo's systems. (*Ibid.*) But on September 22, Yahoo gave notice in a press release that the personal information of approximately 500 million users had been stolen in 2014, by what Yahoo believed were state-sponsored hackers. (*Id.* at ¶ 6.) News articles reported that Yahoo executives believed the hackers were linked to Russia and that Mayer, Yahoo's CEO and director, had known about the breach since at least July 2016. (*Id.* at ¶¶ 7-8.) The 2014 intrusion—which Yahoo code-named the "Siberia Intrusion"—was promptly discovered by Yahoo but was not disclosed at the time. (*Id.* at ¶¶ 10-12.) Two months later, on December 14, 2016, Yahoo disclosed that it had suffered an even larger breach in 2013. (*Id.* at ¶ 13.) This breach compromised the personal information of over one billion users, making it one of the largest information hacks in history. (*Ibid.*) Plaintiff alleges that the individual defendants knew about these data breaches near the time they occurred, but failed to disclose them and signed public filings that falsely stated they were not aware of any material data breaches. (*Id.* at ¶ 14.)

Specifically, Mayer, defendant Thomas McInerney, and defendant Maynard Webb, Jr. were advised of the 2014 breach at a June 23rd, 2015 meeting of the Audit & Finance Committee ("AFC"), on which McInerney served. (FAC, ¶ 20.) At that meeting, Ramses Martinez from Yahoo's security information department gave a presentation that included a "Nation State Update" on the 2014 data breach. (*Ibid.*) Martinez had by that time received a report from a

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[1] A preliminary injunction may be granted based on allegations in a verified complaint, other than allegations on information and belief. (See Code Civ. Proc., § 527, subd. (a); *Riviello v. Journeymen Barbers, Hairdressers and Cosmetologists' Intern. Union of America, Local No. 148* (1948) 88 Cal.App.2d 499, 501, 503 [verified complaint is treated as an affidavit; however, affidavits made on information and belief must be disgarded].)

third-party forensic expert, Dell SecureWorks, indicating that the 2014 intruders had exfiltrated data from Yahoo's systems. (*Id.* at ¶¶ 112-113.)

By 2016, McInerney was the only remaining AFC member who had attended the 2015 meeting. (FAC, ¶ 21.) Despite this conflict, McInerney was asked to chair the Strategic Review Committee ("SRC") formed to pursue opportunities including the pending asset sale,[2] and was also unofficially offered the position of CEO of "Altaba," the entity that will manage the former Yahoo operations after the sale. (*Ibid.*) Moreover, when the 2014 security breach became public in 2016, the board appointed the AFC on which McInerney still served to investigate the breach. (*Id.* at ¶ 22.) Ten days later, it stripped the AFC of this authority and formed a Special Cybersecurity Review Committee ("SCRC" or "Independent Committee") consisting of all members of the AFC other than McInerney. (*Id.* at ¶ 24.) The board took this action in light of McInerney's conflict resulting from his briefing on the data breach in 2015. (*Id.* at ¶¶ 23-24.)

Despite this recognized conflict, McInerney was permitted to continue as Chairman of the SRC. (FAC, ¶ 25.) In the fall of 2016, the key issue for the SRC was the effect of the recently-disclosed data breaches on the deal Yahoo and Verizon had signed in July. (*Ibid.*) Yahoo permitted multiple conflicted individuals to communicate directly with Verizon about this issue. (*Id.* at ¶ 26.) Defendant Ronald S. Bell—who Yahoo later fired for failing to report and take corrective action on the 2014 data breach—spoke directly with Craig Silliman of Verizon on October 10, 2016 about whether the 2014 breach was a "Material Adverse Event" under the purchase agreement. (*Ibid.*) Both Bell and Mayer remained heavily involved in the Independent Committee's investigation, despite their potential liability. (*Id.* at ¶¶ 27-29.)

When Verizon learned of the 2014 data breach, it continued its due diligence and discovered that Yahoo's executives and directors had known about the breach but failed to disclose it for years, breaching their fiduciary duties. (FAC, ¶ 34.) Verizon sought to use these

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[2] According to the definitive proxy statement, the SRC was initially composed of Webb, who served as Chairman, defendant H. Lee Scott, Jr., and McInerney. On March 8, 2016, Scott resigned due to other responsibilities and defendant Eric K. Brandt was appointed to replace him. On April 26, 2016, Yahoo entered into the "Starboard Settlement Agreement" to settle a proxy contest pertaining to the election of directors at Yahoo's 2016 annual meeting. Pursuant to that agreement, defendant Jeffrey Smith was appointed to the Strategic Review Committee in place of Webb, and McInerney became Chair. Webb nevertheless continued to attend most meetings of the committee.

circumstances to gain a bargaining advantage, and indicated it was likely to deem the breach a "Material Adverse Event" under the purchase agreement. (*Id.* at ¶ 35.) These efforts resulted in a renegotiated deal where Verizon would pay $350 million less for Yahoo's assets and Yahoo would retain a large share of the liabilities resulting from the data breaches (liabilities which would have been attributed to Verizon under the original purchase agreement). (*Id.* at ¶¶ 37-40.) The retained liabilities constitute fifty percent of those relating to the data breaches and all of those connected to related shareholder lawsuits. (*Id.* at ¶ 200.) Also as a result of the renegotiation, Verizon released certain claims it may have against Yahoo and its executives related to the data breaches. (*Id.* at ¶¶ 198, 202.)

Meanwhile, on September 22, 2016, defendant and board chairman Eric Brandt recommended Art Chong to McInerney as a candidate for General Counsel of Altaba. (FAC, ¶ 148.) A reasonable inference is that Brandt and McInerney knew that Yahoo's general counsel at the time, Bell, was implicated in the 2014 data breach and might need to be recused. (*Ibid.*) Without considering any other candidates, the board hired Chong as an "Outside Advisor" at a salary of $100,000 per month and he became involved in the internal investigation of the 2014 data breach, even while Bell continued his active involvement in the investigation. (*Id.* at ¶ 149.)

As stated in Yahoo's 2016 Form 10-K, following its investigation, the Independent Committee concluded the following:

> the Company's information security team had contemporaneous knowledge of the 2014 compromise of user accounts, as well as incidents by the same attacker involving cookie forging in 2015 and 2016. In late 2014, senior executives and relevant legal staff were aware that a state-sponsored actor had accessed certain user accounts by exploiting the Company's account management tool. The Company took certain remedial actions, notifying 26 specifically targeted users and consulting with law enforcement. While significant additional security measures were implemented in response to those incidents, it appears certain senior executives did not properly comprehend or investigate, and therefore failed to act sufficiently upon, the full extent of knowledge known internally by the Company's information security team. Specifically, as of December 2014, the information security team understood that the attacker had exfiltrated copies of user database backup files containing the personal data of Yahoo users but it is unclear whether and to what extent such evidence of exfiltration was effectively communicated and understood outside the information security team. However, the Independent Committee did not conclude that there was an intentional suppression of relevant information.

> Nonetheless, the Committee found that the relevant legal team had sufficient information to warrant substantial further inquiry in 2014, and they did not sufficiently pursue it. As a result, the 2014 Security Incident was not properly investigated and analyzed at the time, and the Company was not adequately advised with respect to the legal and business risks associated with the 2014 Security Incident. The Independent Committee found that failures in communication, management, inquiry and internal reporting contributed to the lack of proper comprehension and handling of the 2014 Security Incident. The Independent Committee also found that the Audit and Finance Committee and the full Board were not adequately informed of the full severity, risks, and potential impacts of the 2014 Security Incident and related matters.

(FAC, ¶ 42; Decl. of Mark Molumphy ISO Mot. for Preliminary Injunction, Ex. 5, p. 47.)[3]

When the investigation had finished, the board fired Bell. (FAC, ¶ 42.) Mayer was required to forfeit her 2016 bonus and 2017 stock award, but was not held accountable for the damage caused to Yahoo. (*Id.* at ¶ 43.) Chong was named General Counsel of Yahoo, as well as of Altaba, on March 1, 2017. (*Id.* at ¶ 150.)

B. The Alleged Deficiencies in the Proxy Statement

On April 24, 2017, Yahoo filed the Definitive Proxy Statement related to the sale. (FAC, ¶ 214.) Plaintiff alleges that the proxy is materially misleading and false in many respects. These deficiencies include the proxy's failure to explain the impact of a purchase price adjustment that will give Verizon a further discount on the sale price because Yahoo awarded higher-than-usual stock-based compensation to its employees after the agreement was signed. (*Id.* at ¶¶ 218-219.) The defendants now know that this adjustment will range from $120 million to $240 million in Verizon's favor. (*Id.* at ¶ 220.)

The proxy also fails to disclose material facts regarding golden parachute payments to Yahoo's executives, including the level and timing of their knowledge of and failure to disclose the 2014 data breach. (FAC, ¶¶ 224-228.) The proxy does not disclose that Brandt and other directors have characterized Yahoo's stock-based compensation as "insane" and "ridiculously high," conflicting with their recommendation that shareholders vote in favor of this compensation. (*Id.* at ¶¶ 229-232.)

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[3] The FAC does not completely set forth the relevant discussion in the 10-K, and truncates the discussion in the middle of a sentence. The Court includes the relevant paragraphs in their entireties for important context.

Plaintiff further alleges that the proxy should identify the members of the Independent Committee and provide more details about their investigation, including the improper involvement of Bell and Mayer and the complete delegation of the investigation to outside counsel. (FAC, ¶¶ 247, 255-261.) The proxy fails to disclose that McInerney was informally offered the position of CEO of Altaba in the fall of 2016, and was disqualified from the internal investigation due to his conflicts. (*Id.* at ¶¶ 249-251.) There is no indication that Bell and Mayer were permitted to continue communicating with Verizon in the fall of 2016, after the data breaches were disclosed and it was clear they were conflicted. (*Id.* at ¶¶ 252-254.)

In addition, the proxy should disclose that neither the board nor the SRC waived potential conflicts related to Bank of America Merrill Lynch working on the deal on Verizon's behalf after discontinuing its initial work for Yahoo. (FAC, ¶ 265.)

Based on these and other allegations, the FAC asserts derivative claims (the first through fifth causes of action); a direct claim for breach of fiduciary duty against the individual defendants based on the omission of material facts from the proxy and other allegations (the sixth cause of action); and a direct claim for aiding and abetting breaches of fiduciary duty against Verizon (the seventh cause of action).

C. The Proceedings Herein

Plaintiff filed her original complaint on March 7, 2017. On March 20, she filed an ex parte application for expedited discovery and for an order shortening time on a motion for preliminary injunction. On April 3, the Court scheduled the hearing on the instant motion for June 6 and set a briefing schedule. It lifted the discovery stay with respect to plaintiff's first set of requests for production of documents and "a small number of depositions of limited scope," including a deposition of Thomas McInerney.

The Court scheduled a hearing to resolve remaining disputes regarding this expedited discovery, and the hearing was held on April 14 following briefing by the parties. On April 18, the Court ordered defendants to provide additional documents and to produce Eric Brandt for deposition. Following Brandt's deposition, plaintiff issued deposition subpoenas to former

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Yahoo security team employees Alex Stamos and Ramses T. Martinez. Jr., and the Court heard and denied various motions to quash these depositions.

With the benefit of this expedited discovery, the motion for preliminary injunction came on for hearing on June 6. Plaintiff filed her moving papers on May 17, 2017. On May 24, Yahoo filed its opposition papers. The same day, it filed an amendment to the proxy statement providing supplemental disclosures intended to address many of the issues raised by plaintiff.

On May 31, plaintiff filed reply papers addressing the deposition testimony provided by Mr. Stamos and Mr. Martinez on May 25. On June 2, Yahoo filed a supplemental opposition brief addressing this testimony, and on June 5, plaintiff filed supplemental reply papers.

II. Motions to Seal

Yahoo brings four motions to seal materials filed in connection with the motion for preliminary injunction. In addition, it moves to seal documents lodged by plaintiffs on May 10, 2017 in connection with an informal discovery conference.

A. Legal Standard for Motions to Seal

"The court may order that a record be filed under seal only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (Cal. Rules of Court, rule 2.550(d).)

"Courts have found that, under appropriate circumstances, various statutory privileges, trade secrets, and privacy interests, when properly asserted and not waived, may constitute overriding interests." (*In re Providian Credit Card Cases* (2002) 96 Cal.App.4th 292, 298, fn. 3.) In addition, confidential matters relating to the business operations of a party may be sealed where public revelation of the information would interfere with the party's ability to effectively compete in the marketplace. (See *Universal City Studios, Inc. v. Superior Court (Unity Pictures Corp.)* (2003) 110 Cal.App.4th 1273, 1285-1286.)

Where some material within a document warrants sealing, but other material does not, the document should be edited or redacted if possible, to accommodate both the moving party's overriding interest and the strong presumption in favor of public access. (Cal. Rules of Court, rule 2.550(d)(4), (5).) In such a case, the moving party should take a line-by-line approach to the information in the document, rather than framing the issue to the court on an all-or-nothing basis. (*In re Providian, supra*, 96 Cal.App.4th at p. 309.)

B. Motions to Seal Preliminary Injunction Materials

Yahoo's first motion to seal pertains to the unredacted version of its opposition to plaintiff's motion for preliminary injunction, the transcripts of the depositions of Thomas J. McInerney and Eric Brandt, and Brandt's declaration filed in support of Yahoo's opposition. In support of this motion, Yahoo submits a declaration by its Vice President & Associate General Counsel, Daniel Tepstein. Mr. Tepstein declares that the deposition transcripts contain confidential and highly-sensitive information about confidential strategic matters, technical security measures, data breaches, user engagement trend data, discussions regarding Yahoo's Alibaba investment, Yahoo's involvement and communications with agencies of the United States government, and the identity of a third party that submitted a bid for Yahoo's operating assets. Similarly, the Brandt declaration contains confidential and sensitive information regarding Yahoo's investigation of and response to a data breach by a state-sponsored actor. Mr. Tepstein declares that the disclosure of this information would give Yahoo's competitors knowledge of its business operations and could make information about Yahoo's network security systems available to potential hackers.

The Court agrees that these overriding interests support sealing some of the material at issue. However, Yahoo has made no attempt to tailor its request by redacting the deposition transcripts and declaration at issue. Further, it has made overly broad redactions to its opposition brief, removing publicly-available information including descriptions of the Independent Committee's findings and other matters disclosed in its public filings, as well as general descriptions of plaintiff's allegations in this action.

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Under the circumstances, the Court will continue the hearing on this motion to seal so that Yahoo can submit appropriately-tailored redacted versions of these documents.

On June 2, Yahoo filed two additional motions to seal materials filed in connection with (1) plaintiff's reply brief and (2) Yahoo's supplemental opposition brief. On June 5, it filed a motion to seal documents lodged by plaintiff in connection with her supplemental reply. Again, Yahoo has not attempted to redact the exhibits it asks the Court to seal or to narrowly tailor the redactions to the briefs at issue in these motions. The Court will therefore continue these motions as well.

C. Motion to Seal Discovery Materials

The criteria set forth in rule 2.550 do not directly apply to "discovery motions and records filed or lodged in connection with discovery motions or proceedings." (See Cal. Rules of Court, rule 2.550(a)(3).) Nonetheless, even in discovery proceedings, a party moving for leave to file records under seal must identify the specific information claimed to be entitled to confidentially and the nature of the harm threatened by disclosure. (See *H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 894.)

While Yahoo does not directly address the harm that would result from disclosure of the informal discovery conference materials, it is apparent that these materials reflect the same type of information—and include some of the same documents—at issue in Yahoo's first motion to seal. Based on the explanation provided by Yahoo in that motion, and given that the usual sealing requirements such as narrow tailoring do not apply to discovery proceedings, the Court will grant Yahoo's motion to seal the materials lodged on May 10.

D. Conclusion and Order

The motions to seal the preliminary injunction materials are CONTINUED TO JULY 14, 2017 at 9:00 a.m. in Department 1. Appropriately redacted public versions of the documents at issue shall be filed by JULY 3, 2017.

The motion to seal materials lodged by plaintiffs on May 10, 2017 is GRANTED.

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III. Motion for Preliminary Injunction

In her moving papers, plaintiff raises eight assertedly material omissions from the proxy statement and urges that injunctive relief is the preferred remedy in nondisclosure cases such as this. Yahoo contends that these omissions are not material to the shareholder vote, and many of them are addressed by the supplemental disclosures it has already issued. It argues that delaying the shareholder vote will impose expenses on shareholders and jeopardize the timely closing of the sale. Plaintiff submits additional evidence in support of her motion with her reply papers, and the parties address this evidence in their supplemental opposition and reply papers. The Court has read and considered all of the parties' filings.

As an initial matter, plaintiff's and Yahoo's respective requests for judicial notice of Yahoo's SEC filings are GRANTED. (Evid. Code, § 452, subds. (c) and (h); *StorMedia, Inc. v. Superior Court (Werczberger)* (1999) 20 Cal.4th 449, 456, fn. 9 [taking judicial notice of the existence of proxy statement and registration statement filed with SEC].)

A. Legal Standard for Motion for Preliminary Injunction

The purpose of a preliminary injunction is to preserve the status quo until a trial can be held. (*Continental Baking Co. v. Katz* (1968) 68 Cal.2d 512, 528.) A decision to grant or deny a preliminary injunction is not a final decision on the merits of the case. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) The court's decision is based on the record before it at the time of the request. Issuing an injunction "is an extraordinary power, and is to be exercised always with great caution and … rarely, if ever, should be exercised in a doubtful case." (*Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1040, internal quotations omitted.)

The court must evaluate two interrelated factors to decide whether to grant the requested injunction. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) The first is the likelihood that the plaintiff will ultimately prevail at trial. (*Ibid.*) It must be shown that success is "reasonably probable" before the court can grant relief. (*San Francisco Newspaper Co. v. Superior Court (Miller)* (1985) 170 Cal.App.3d 438, 442.) The second factor is the relative harm that the parties face. (*IT Corp. v. County of Imperial, supra*, 35 Cal.3d at pp. 69-70.) The

court must ask: Will the plaintiff suffer greater injury if the injunction is denied than the defendant will suffer if it is granted? The court's final decision must be guided by a mix of these two factors, so that if a stronger showing is made on one factor, a lesser showing is required on the other. (*Butt v. State of California* (1992) 4 Cal.4th 668, 678.)

B. Likelihood of Success on the Merits

The merits of plaintiff's claims for breach of fiduciary duty are governed by Delaware law, as Yahoo is a Delaware corporation. (See *Neubauer v. Goldfarb* (2003) 108 Cal.App.4th 47, 62-63 [applying Delaware law to shareholder's claim for breach of the duty of disclosure].)

> In the leading case of *Lynch v. Vickers Energy Corp.* the Delaware Supreme Court held directors and majority shareholders owe a fiduciary duty to minority shareholders which requires " 'complete candor' in disclosing fully 'all of the facts and circumstances surrounding' ..." a transaction involving the minority. "In evaluating whether defendants satisfied their fiduciary duty of candor, the question is one of materiality." Information which is material is "information such as a reasonable shareholder would consider important in deciding whether to [take action]." Thus a director or majority shareholder breaches the duty of candor owed to the minority by disseminating false information or making misleading omissions.

(*Ibid.*; see also *In re Netsmart Techs., Inc. Shareholders Litigation* (Del. Ch. 2007) 924 A.2d 171, 199 [applying this standard to a claim arising from an alleged failure to disclose information to shareholders in connection with proposed merger].)

As Delaware courts have explained,

> [a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote .... It does not require proof of a substantial likelihood that disclosure ... would have caused the reasonable investor to change his vote. What the standard does contemplate is a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure ... would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

(*Zirn v. VLI Corp.* (Del. 1996) 681 A.2d 1050, 1056, internal citations and quotations omitted.)

"In addition to the traditional duty to disclose all facts material to the proffered transaction, directors are under a fiduciary obligation to avoid misleading partial disclosures." (*Zirn v. VLI Corp., supra,* 681 A.2d at p. 1056) "[T]he disclosure of even a non-material fact can,

in some instances, trigger an obligation to disclose additional, otherwise non-material facts in order to prevent the initial disclosure from materially misleading the stockholders." (*Ibid.*)

Ultimately, the goal of disclosure "is not to flood shareholders in a sea of related, but immaterial information that ripples endlessly away from the financial or governance core of the matter," but is rather "to provide a balanced and truthful account of those matters which are discussed in a corporation's disclosure materials." (*Zirn v. VLI Corp., supra,* 681 A.2d at p. 1058, internal citations and quotations omitted.)

With this standard in mind, the Court turns to the specific asserted omissions raised by plaintiff.

*1. Asserted Material Omission #1: Timing of McInerney's Altaba CEO Offer*

Plaintiff presents evidence that defendant McInerney, who chaired the SRC, was informally offered the position of CEO of Altaba in the fall of 2016, during the time when the parties were considering the impact of the 2014 data breach on the sale. While the original proxy discloses that McInerney will assume the CEO position when the sale closes, plaintiff contends that this disclosure is misleading and incomplete because it refers only to the date McInerney executed his offer letter, March 10, 2017, thereby suggesting that the offer was not made until after negotiations were complete. (See April 24th 2017 Proxy Statement ("Proxy"), lodged by plaintiff on May 17, 2017, Summary, p. 12.)

The supplement to the proxy statement adds a paragraph more fully describing McInerney's discussions with the board about a potential post-transaction role. (See Decl. of Jordan Eth ISO Opp., Ex. 1, Supplement to Proxy Statement ("Supplement"), pp. 1-2.) It specifically discloses that conversations regarding the CEO position with Altaba began in the summer of 2016. The supplemental disclosures accordingly moot plaintiff's argument on this point.

*2. Asserted Material Omission #2: McInerney's Disqualification from the Internal Investigation*

Plaintiff further urges that McInerney's disqualification from the internal investigation into the security breaches must be disclosed, because the disqualification shows that McInerney

also had a conflict in his role on the SRC. While not articulated by plaintiff, presumably the reasoning behind this argument is that McInerney's disqualification shows he may have liability connected to the security breaches, some of which—any potential liability to Verizon—will be released in connection with the sale.

To the extent plaintiff contends that the board should disclose its own preliminary conclusions about McInerney's liability, this argument is contrary to Delaware law. "A board's duty of disclosure does not require it to engage in self-flagellation and draw legal conclusions implicating itself in a breach of fiduciary duty." (*Orman v. Cullman* (Del. Ch. 2002) 794 A.2d 5, 34, internal citations and quotations omitted.) As explained by the Delaware Supreme Court in *Loudon v. Archer-Daniels-Midland Co.* (Del. 1997) 700 A.2d 135, this "self-flagellation rule" was designed to foreclose any requirement that a board "confess to wrongdoing prior to any adjudication of guilt." (At p. 145 [holding that proxy issued in connection with board election was not required to disclose whether one board member was captured on video tape by the FBI while engaged in price-fixing and whether another board member approved bonuses to corporate officers using false invoices].)

In any event, the supplemental disclosures now reflect that shortly after it began the internal investigation, the AFC determined that the investigation should instead be conducted by a special committee of members who did not serve on the board at the time of the security incident, and this recommendation was accepted by the board. (Supplement, p. 2.) The Court finds this disclosure to be adequate.

*3. Asserted Material Omission #3: Mayer's and Bell's Conversations with Verizon*

The third asserted material omission raised by plaintiff is that Mayer and Bell had conversations with Verizon executives after the data breaches were disclosed, although they were not members of the SRC. Plaintiff contends that without disclosing these conversations, the proxy creates a misleading impression that the SRC handled all the key negotiations related to the sale.

Having reviewed the documents submitted by plaintiff in connection with this argument,

the Court does not find that they show Mayer and Bell engaged in "negotiations." Rather, the documents reflect that Mayer and Bell discussed with Verizon the nature of the breaches and their impact on Yahoo's operating assets. The omission of these conversations does not render the proxy misleading, as the proxy does not suggest that Yahoo management was walled off from interactions with Verizon and other potential purchasers. To the contrary, the proxy discusses many occasions on which management, including Mayer and Bell, reported to Verizon and others regarding Yahoo's operations. (See, e.g., Proxy, pp. 43 [in March and April of 2016, interested parties including Verizon attended half-day presentations by Yahoo managers, including Mayer and Bell], 44 [individualized question-and-answer sessions with the management team, including Mayer, were offered, and "potential bidders continued to engage in extensive due diligence discussions with Yahoo's management team"], 46 [in April and May of 2016, potential bidders including Verizon continued to meet with Yahoo's management, including Mayer and Bell].) While the original proxy does not disclose every one of the specific conversations raised by plaintiff, it reflects that Yahoo "management" continued to engage with Verizon after the breaches were discovered. (See, Proxy, pp. 57 [in November and December of 2016, the SRC, "Yahoo management, Verizon," and attorneys "had multiple conference calls" regarding proposed amendments to the original agreement], 58 ["Yahoo's management analyzed the impact of the Security Incidents and related matters on the Business and provided the Board and the [SRC] with periodic updates with respect to the results thereof. Verizon was provided with periodic updates with respect to these matters in January and February 2017."].)

In addition to the context provided by the original proxy, the supplemental disclosures now specifically describe Mayer's and Bell's conversations with Verizon following the announcement of the data breaches. (Supplement, p. 3.) In light of these circumstances, the proxy's disclosures regarding these conversations are sufficient.

*4. Asserted Material Omission #4: Bank of America Conflict*

Plaintiff contends that the proxy fails to disclose that neither Yahoo's board nor the SRC ever waived Bank of America Merrill Lynch's conflict in acting as Verizon's investment banker after it had worked with Yahoo. However, she cites no authority establishing that Bank of

America had a conflict under the circumstances or supporting her statement that Delaware law requires any failure to waive the conflict to be disclosed.

As urged by Yahoo, the original proxy does disclose that Bank of America advised Yahoo in 2015 in connection with a contemplated spin-off of its Alibaba assets and was subsequently engaged by Verizon in connection with the sale at issue, in March of 2016. (Proxy, p. 40.) Again, any "legal conclusions implicating" the board in connection with these circumstances need not be disclosed. (See *Orman v. Cullman, supra,* 794 A.2d at p. 34; see also *David P. Simonetti Rollover IRA v. Margolis* (Del. Ch., June 27, 2008) 2008 WL 5048692, *7 [disclosure "that the same investment bank that had represented TriZetto in November 2007 was representing its potential acquirer through the Merger" was adequate; "speculative inference[s]" regarding nonpublic information that the bank may have acquired did not support a finding of materiality].)

The disclosures related to Bank of America are therefore adequate.

*5. Asserted Material Omission #5: Independent Committee Details*

Plaintiff urges that, while using the Independent Committee's "imprimatur" to withhold the facts justifying the price reduction tied to the security breaches, the proxy does not disclose the identities of the committee members so that shareholders can assess their potential conflicts, and misleadingly states that the committee conducted Yahoo's internal investigation into the breaches, when in fact it completely delegated this function to outside counsel.

The identities of the committee members and a fuller description of their investigation, which clarifies that counsel performed the factual investigation of the breaches at the committee's direction, are now provided in the supplemental disclosures. (Supplement, p. 2.) The specific omissions raised by plaintiff in section #5 have thus been addressed. Plaintiff's broader argument regarding the relevance of the committee's investigation to the price reduction will be addressed in greater detail below.

*6. Asserted Material Omission #6: Individuals Who Were Not Recused from the Independent Committee*

Related to the argument above, plaintiff contends that the proxy should disclose that Bell

was not recused from Yahoo's internal investigation until February 2017, Mayer was never recused, and Art Chong—who served as an outside legal advisor on the investigation—was conflicted because he was offered the position of General Counsel at Altaba. As urged by Yahoo, the proxy does disclose that Chong served as counsel to Yahoo beginning in October 2016 and will serve as General Counsel of Altaba.

Plaintiff does not explain how these asserted conflicts, which do not pertain to the actual sale process, are material to shareholders' vote on the sale. She argues that the internal investigation was "tainted" by these conflicts, while the proxy suggests that the investigation was "completely independent and thorough." Again, however, considering that no court has adjudged the investigation inadequate, Yahoo has no duty to adopt plaintiff's view on this matter. The proxy's discussion of the internal investigation as context to the sale negotiations does not transform a vote on the sale into a referendum on the investigation demanding a second layer of disclosures. With regard to this issue, the Court has reviewed the materials submitted by plaintiff in connection with her reply papers, including the transcripts of Mr. Martinez's and Mr. Stamos's depositions, and does not find that this evidence shows that statements in the proxy or 10-K relating to the internal investigation are false or misleading.

In sum, plaintiff does not demonstrate that asserted conflicts related to the Independent Committee are material to the shareholder vote on the sale to Verizon.

*7. Asserted Material Omission #7: Information Relevant to the Golden Parachute Vote*

Plaintiff asserts that a number of facts relevant to the shareholder vote on golden parachute payments to Yahoo executives (specifically, Mayer, Yahoo co-founder David Filo, CFO Kenneth A. Goldman, and Chief Revenue Officer Lisa Utzschneider) have not been disclosed, including: the Independent Committee's findings about Mayer's and Filo's knowledge of the data breaches; Mayer's and Bell's conflicted involvement in the internal investigation; the reasons why Bell was fired in connection with the security breaches but other executives including Mayer were not; and the fact that board members called Yahoo's stock-based compensation "insane" and "ridiculously high."

While the Court agrees that shareholders could deem culpable acts by Yahoo executives related to the security breaches relevant to their vote on the executives' golden parachutes, the rule against "self-flagellation" applies in this context as well. Yahoo disputes that these individuals engaged in any wrongdoing, and is not required to disclose disputed facts and legal conclusions about the events surrounding the security breaches in connection with a shareholder vote on a separate issue, even one that implicates the executives' merit. (See *Loudon v. Archer-Daniels-Midland Co.*, *supra*, 700 A.2d 135 [applying this rule in the context of board elections].) Shareholders are aware of plaintiff's allegations in general, since the proxy discloses the pendency of this action. However, any adjudication of fault has yet to occur and will not be undertaken by the Court in connection with its review of the proxy for the limited purpose of evaluating plaintiff's entitlement to a preliminary injunction.

Further, as noted by Yahoo, plaintiff does not contend that the proxy violates the disclosure requirements established by regulation in connection with "say-on pay" votes like these. Some courts have suggested or held that a nondisclosure claim is not even supportable under these circumstances. (See, e.g., *Morrison v. Hain Celestial Group, Inc.* (N.Y. Sup. Ct. 2013) 971 N.Y.S.2d 391, 395 ["a 'Say on Pay' voting procedure, which is entirely advisory in nature[,] ... does not—in accordance with the express terms of the Dodd–Frank Act itself—create any new or additional, director-based, fiduciary obligations"].) While the Court does not go this far, the uncertain legal landscape further reduces the likelihood that plaintiff will succeed on the merits on this theory.

Finally, plaintiff's evidence that board members have characterized Yahoo's stock-based compensation in general as too high and that Brandt was not completely sure at the time of his deposition whether he would vote in favor of the golden parachutes himself does not establish that additional disclosures are needed. The deliberations and reasoning behind a board recommendation need not necessarily be disclosed, and plaintiff does not contend that any of the affirmative disclosures related to the golden parachute vote are misleading. (See *Newman v. Warren* (Del. Ch. 1996) 684 A.2d 1239, 1246 [if a board chooses to give reasons for its

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recommendation, "the statement of those reasons must, of course, be true and not misleading"; however, the reasoning of each individual director need not be disclosed].)

Accordingly, plaintiff does not show that the disclosures related to the golden parachute vote are inadequate.

*8. Asserted Material Omission #8: Value of the Purchase Price Adjustment*

Finally, plaintiff contends that the value of a purchase price adjustment associated with the sale is now known to Yahoo with reasonable certainty and must be disclosed. Plaintiff cites Brandt's testimony that the adjustment will be somewhere between $120 to $240 million in favor of Verizon. As urged by Yahoo, Brandt did indicate during his testimony that he was not sure of the exact calculation and that the calculation could not be performed with precision until closing. However, Brandt was clear that the adjustment would be in Verizon's favor and testified that the figure "shouldn't move in a material fashion." (Decl. of Jordan Eth ISO Opp., Ex. 5, p. 91.)

During his testimony, Brandt explained that the intent of the purchase price adjustment "was to put a stake in the ground on the nature of compensation to normalize it so that in the event that we were to grant more and they were to assume more, there would be an adjustment[,] ... [a]nd in the event that there was greater attrition than we had projected and their assumption of stock-based compensation went down, we would benefit." (Eth Decl., Ex. 5, p. 88.) Initially, the sale was expected to close in the first quarter of 2017, which "would have put [Yahoo] in front of the [2017] equity grant, and Verizon would have paid the equity grant." (*Id.* at p. 92.) But when the sale did not close as expected, Yahoo "had to make an equity grant, which did cost us some part of the consideration." (*Id.* at p. 90.)

The proxy reflects that the purchase price will be adjusted "plus or minus 60 percent of the decrease or increase, respectively, in the aggregate value between the execution of the Original Stock Purchase Agreement and the closing of any outstanding unvested Yahoo RSU [or restricted stock unit] awards held by employees of Yahoo Holdings (and its subsidiaries)." (Proxy, p. 68.) Yahoo urges that the amounts of stock-based compensation that were awarded in 2017 are disclosed in its public filings, and points out that the stock price at closing and number

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of unvested RSU awards at closing are unknown and "necessarily uncertain until the date of closing."

The Court is unaware of any authority addressing the need to provide an estimate of a purchase price adjustment that will be calculated at closing. Yahoo cites an unpublished decision, *Rosser v. New Valley Corp.* (Del. Ch., Aug. 15, 2000, No. 17272) 2000 WL 1206677, which held that estimates of the value of stock and warrants following execution of a recapitalization plan were not material to the shareholder vote on the plan where "[t]he proxy statement armed plaintiffs with the information needed to make their own estimates." (At *4.) *Rosser* cited *Arnold v. Society for Sav. Bancorp, Inc.* (Del. 1994) 650 A.2d 1270, 1280 for the proposition that "Delaware law does not require disclosure of inherently unreliable or speculative information which would tend to confuse stockholders or inundate them with an overload of information" (although *Arnold* discussed this principle "as an abstraction" and held that the information before it—the existence of a prior bid—*was* material). Granting a motion to dismiss the above-described nondisclosure claim, *Rosser* concluded that "corporate management need not disclose ruminations regarding uncertain future value because their estimates could be as misleading as helpful." (At *4.)

Here, if Brandt's estimate were correct, the adjustment would represent up to five percent of the purchase price, a material change. There is a substantial likelihood that a reasonable shareholder would consider a sizeable purchase price adjustment in Verizon's favor important in deciding how to vote on the sale. While shareholders could theoretically calculate the purchase price adjustment themselves, they should not be required to undertake this burdensome exercise to obtain basic information about the sale price. (See *Vento v. Curry* (Del. Ch., Mar. 22, 2017, No. CV 2017-0157-AGB) 2017 WL 1076725, at *4 [stockholders "should not have to go on a scavenger hunt" through the proxy and public filings to obtain material information; enjoining shareholder vote].)

At the hearing on this matter, Yahoo's counsel represented that Brandt's estimate was incorrect, and the purchase price adjustment will actually be a $21 million adjustment in *Yahoo's* favor. Counsel made an offer of proof to this effect, and the Court directed the parties to meet

and confer on this issue. Plaintiff agreed to accept counsel's representation, subject to Yahoo's promise to provide Verizon's written confirmation of this figure. Plaintiff continues to maintain that a disclosure of the value of the purchase price adjustment is needed, and the parties have stipulated that Yahoo will provide such a disclosure by approximately 2 P.M. on June 6, in substantially the form reflected in Exhibit A to this order. The Court finds that the parties' agreement appropriately resolves this issue, and shareholders will be adequately informed of the value of the purchase price adjustment when Yahoo issues its further supplemental disclosure.

C. Balance of Harms

"A preliminary injunction motion is ... the appropriate mechanism by which to challenge alleged disclosure violations." (*Wayne County Employees' Retirement System v. Corti* (Del. Ch. 2008) 954 A.2d 319, 329.) "Delaware case law recognizes that an after-the-fact damages case is not a precise or efficient method by which to remedy disclosure deficiencies." (*In re Staples, Inc. Shareholders Litigation* (Del. Ch. 2001) 792 A.2d 934, 960.) "A post-hoc evaluation will necessarily require the court to speculate about the effect that certain deficiencies may have had on a stockholder vote and to award some less-than-scientifically quantified amount of money damages to rectify any perceived harm." (*Ibid.*) "[T]he issuance of a preliminary injunction that persists until [disclosure] problems are corrected ... specifically vindicates the stockholder right at issue—the right to receive fair disclosure of the material facts necessary to cast a fully informed vote—in a manner that later monetary damages cannot and is therefore the preferred remedy, where practicable." (*Ibid.*) Thus, Delaware courts have held that a showing that material information was not disclosed to shareholders is itself sufficient to establish irreparable harm justifying the entry of an injunction. (See *ODS Technologies, L.P. v. Marshall* (Del. Ch. 2003) 832 A.2d 1254, 1263 ["The harm to shareholders in the form of a misinformed vote is alone sufficient to justify the imposition of an injunction."].)

Still, courts are "understandably cautious when the issuance of an injunction would deprive shareholders of the benefits of a merger transaction without offering them any realistic prospect of a superior alternative." (*Kohls v. Duthie* (Del. Ch. 2000) 765 A.2d 1274, 1289, internal citations and quotations omitted.) "[I]n a situation where ... no other bidder has

emerged despite relatively mild deal protection devices, the plaintiff's showing of a reasonable likelihood of success must be particularly strong" in light of "[t]he risk that enjoining the shareholder vote will disrupt the deal and prevent the shareholders from exercising a potentially value-maximizing opportunity ...." (*Wayne County Employees' Retirement System v. Corti, supra,* 954 A.2d at p. 331; see also *In re Pennaco Energy, Inc.* (Del. Ch. 2001) 787 A.2d 691, 715, fn. 46 [month-long delay could diminish the value of the deal if it closed and would risk triggering the buyer's right to walk away; "[t]his sort of gamble would have to be justified by a very strong merits showing"].)

Here, considering the further supplemental disclosure that Yahoo has agreed to issue, plaintiff has not shown that the proxy misrepresents or omits any material information. Shareholders can be expected to review and consider the single additional disclosure in short order. (See *Berger v. Intelident Solutions, Inc.* (Del. Ch. 2006) 911 A.2d 1164, 1174, fn. 61 ["In a supplemental disclosure situation, a shorter time period is defensible as a matter of logic. Once stockholders have received the main disclosure, their focus is centered on the transaction. Thus, it is easier to assimilate the new disclosures with the old."].) Consequently, so long as Yahoo issues the additional disclosure as agreed, the Court will not delay the shareholder vote.

D. Conclusion and Order

The Court GRANTS IN PART the motion for preliminary injunction and enjoins the shareholder vote until Yahoo issues a further supplemental disclosure in substantially the form reflected in Exhibit A to this order, which it shall file by approximately 2 P.M. on June 6, 2017. At that point, unless the Court receives notice from plaintiff that Yahoo has not complied with the parties' agreement, the injunction will be automatically lifted with no need for further action by the Court and the shareholder vote will proceed as scheduled. Plaintiff's motion is in all other respects DENIED.

IT IS SO ORDERED.

Dated: June 6, 2017

Honorable Brian C. Walsh
Judge of the Superior Court

# EXHIBIT A

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

# SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934**
**(Amendment No. __)**

Filed by the Registrant ☒ Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

☐ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

☐ Definitive Proxy Statement

☒ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-11(c) or §240.14a-12

# Yahoo! Inc.

**(Name of Registrant as Specified In Its Charter)**

**(Name of Person(s) Filing Proxy Statement, if other than the Registrant)**

Payment of Filing Fee (Check the appropriate box):

☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

_____

(2) Aggregate number of securities to which transaction applies:

_____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of the transaction: $4,825,800,000.

(5) Total fee paid:

☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

## SUPPLEMENT TO PROXY STATEMENT

Yahoo! Inc. ("Yahoo" or the "Company") is making certain supplemental disclosures to its proxy statement dated April 24, 2017 (as previously supplemented, the "Proxy Statement") relating to the pending sale by Yahoo of its operating business to Verizon Communications Inc. (the "Sale Transaction") and related proposals, which was filed with the Securities and Exchange Commission (the "SEC") on April 24, 2017 and which was supplemented on May 25, 2017. Capitalized terms used herein but not otherwise defined herein have the meanings ascribed to them in the Proxy Statement.

As disclosed in the Proxy Statement, on March 7, 2017, a stockholder derivative and class action captioned *Spain v. Marissa Mayer, et al.*, was filed in the Superior Court of California for the County of Santa Clara. The complaint asserts claims for breach of fiduciary duty, purportedly on behalf of Yahoo, against certain of Yahoo's current and former directors and officers. The complaint alleges that defendants failed to prevent and disclose the Security Incidents discussed under "Security Incidents Contingencies" in Annex 2 of the Proxy Statement and caused or allowed Yahoo to issue materially false and misleading statements in its public filings and other public statements. The complaint also asserts claims of insider trading, purportedly on behalf of Yahoo, against certain defendants under California Corporations Code sections 25402 and 25403. The complaint also asserts direct claims, purportedly on behalf of all current Yahoo stockholders, against individual defendants for breach of fiduciary duty relating to the disclosures in the Proxy Statement concerning the negotiation and approval of the Stock Purchase Agreement and against Verizon for aiding and abetting those individual defendants' alleged breach of fiduciary duty. The complaint seeks class certification, unspecified damages, to enjoin defendants from consummating the transactions contemplated by the Stock Purchase Agreement, an award of attorneys' fees and costs, and other related injunctive and equitable forms of relief.

Pursuant to an order of the Superior Court of California for the County of Santa Clara, Yahoo has been required to make certain supplemental disclosures related to the Sale Transaction, which are set forth below.

The Proxy Statement is amended and supplemented by, and should be read in conjunction with, the supplemental disclosures set forth below. Stockholders are encouraged to read carefully the supplemental disclosures set forth below, the Proxy Statement, the annexes and exhibits to the Proxy Statement, and the documents incorporated by reference into the Proxy Statement.

### Supplemental Disclosures

*The following paragraph is inserted following the last bullet point under the caption "Purchase Price" on page 68 of the Proxy Statement:*

Assuming that the Closing occurred on June 6, 2017, the Company estimates that the adjustment to the purchase price pursuant to the immediately preceding bullet point (the "Equity Award Adjustment Amount") would result in an increase to the purchase price that Verizon will pay or caused to be paid in connection with the Sale Transaction of approximately $21 million. The final calculation of the Equity Award Adjustment Amount will be made on the date of the actual Closing and could be higher or lower than this estimate due to changes in the number of unvested Yahoo RSU awards outstanding prior to the Closing as a result of additional vesting of RSUs, forfeiture of RSUs upon employees' termination of employment and/or changes in Yahoo's stock price prior to the Closing. The foregoing is an estimate of the Equity Award Adjustment Amount only and is not an estimate of the aggregate amount of all of the adjustments to the purchase price described in the bullet points above.

**Forward-Looking Statements**

This communication contains forward-looking statements concerning the Sale Transaction. Risks and uncertainties may cause actual results to differ materially from the results predicted. Potential risks and uncertainties include, among others: (i) the inability to consummate the Sale Transaction in a timely manner or at all, due to the inability to obtain or delays in obtaining approval of Yahoo's stockholders, the necessary regulatory approvals, or satisfaction of other conditions to the closing of the Sale Transaction; (ii) the existence or occurrence of any event, change, or other circumstance that could give rise to the termination of the Stock Purchase Agreement, which, in addition to other adverse consequences, could result in the Company incurring substantial fees, including, in certain circumstances, the payment of a termination fee to Verizon under the Stock Purchase Agreement; (iii) potential adverse effects on Yahoo's relationships with its existing and potential advertisers, suppliers, customers, vendors, distributors, landlords, licensors, licensees, joint venture partners and other business partners; (iv) the implementation of the Sale Transaction will require significant time, attention and resources of Yahoo's senior management and others within Yahoo, potentially diverting their attention from the conduct of Yahoo's business; (v) risks related to Yahoo's ability to retain or recruit key talent; (vi) costs, fees, expenses and charges related to or triggered by the Sale Transaction; (vii) the net proceeds that the Company will receive from Verizon is subject to uncertainties as a result of the purchase price adjustments in the Stock Purchase Agreement; (viii) restrictions on the conduct of Yahoo's business, including the ability to make certain acquisitions and divestitures, enter into certain contracts, and incur certain indebtedness and expenditures until the earlier of the completion of the Sale Transaction or the termination of the Stock Purchase Agreement; (ix) potential adverse effects on Yahoo's business, properties, or operations caused by Yahoo implementing the Sale Transaction or foregoing opportunities that Yahoo might otherwise pursue absent the pending Sale Transaction; (x) the initiation or outcome of any legal proceedings or regulatory proceedings that may be instituted against Yahoo and its directors and/or officers relating to the Sale Transaction; and (xi) following the Closing, the Company will be required to register and be regulated as an investment company under the Investment Company Act of 1940, which will result in, among other things, the Company having to comply with the regulations thereunder, certain stockholders potentially being prohibited from holding or acquiring shares of the Company, and the Company likely being removed from the Standard and Poor's 500 Index and other indices which could have an adverse impact on the Company's share price following the Sale Transaction.

All of these risks and uncertainties could potentially have an adverse impact on Yahoo's business and financial performance, and could cause its stock price to decline.

More information about other potential factors that could affect Yahoo's business and financial results is included under the captions "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Yahoo's Annual Report on Form 10-K for the year ended December 31, 2016, as amended, and Quarterly Report on Form 10-Q for the quarter ended March 31, 2017, which are on file with the SEC and available on the SEC's website at *www.sec.gov*. All information set forth in this communication is as of May 24, 2017. Yahoo does not intend, and undertakes no duty, to update this information to reflect subsequent events or circumstances.

**Important Additional Information and Where to Find It.**

Stockholders will be able to obtain copies of this Schedule 14A, the Proxy Statement, any amendments or additional supplements to the Proxy Statement, and other documents filed by Yahoo with the SEC in connection with its special meeting of stockholders in connection with the Sale Transaction, for no charge at the SEC's website at *www.sec.gov*. Copies of the proxy materials may also be requested from Yahoo's proxy solicitor, Innisfree, by telephone at (877) 456-3402 (toll-free) or by email at info@innisfreema.com. Additional information can also be found on our investor relations website at investor.yahoo.net.