

## SESSION IV

### 4.1

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***Hot Topics and Practical Guidance***  
***Conference Session:***  
**Google and Transferable Options —**  
**The Next “Big” Thing?**

*Presented by*

***Matt Connor***, *Smith Barney*

***Ronni Horrillo***, *Google*

***Chris Kovel***, *Morgan Stanley*

***David Lynn***, *TheCorporateCounsel.net*

***David Segre***, *Wilson Sonsini Goodrich & Rosati*

# **Google: Transferable Stock Option Program**

Prepared for NASPP Annual Conference

October 9 – 12, 2007

Session: October 10th : 4:30 PM – 5:45 PM PST

# Panel Introduction

- **Ronni Horrillo:**
  - Google
- **David Segre:**
  - Partner, Wilson Sonsini Goodrich & Rosati
- **David Lynn:**
  - Editor, TheCorporateCounsel.net (formerly with SEC's Division of Corp. Finance)
- **Chris Kovel:**
  - Executive Director, Morgan Stanley
- **Matthew Conner:**
  - Citigroup-Smith Barney

# Overview

- TSO Overview
- Why Google Initiated this program
- Legal Implementation challenges
- SEC approvals and hedging requirements
- Technical Design and Implementation
- Employee Maintenance and Bidder Warrants
- Google: TSO Program Acceptance and Use

# TSO Overview

- The Transferable Stock Options (TSO) program is an innovative program that's creating a new market for employee options making an employee stock option program even more valuable for employees
- Through the TSO program, employees sell options to 3<sup>rd</sup> party bidding financial institutions to receive near fair value for those options
- In traditional exercise, employees receive only the intrinsic value of their options at the moment of exercise (if the employee immediately sells the underlying shares) and no value for the remaining term of the options
- Employees selling through the TSO program are paid a premium by bidders because the options still have unrealized future value
- Options are tradable only after vesting periods have elapsed; same requirement as for exercise under traditional employee option plans

# Why Google Initiated this Program?

Google

Ronni Horrillo

Corporate Stock Administration

# The Google Experience

- Stock options are an important part of compensation
- Employees and accountants/shareholders perceive option values differently
  - Employee “value” vs. company “cost”
  - “Intrinsic value” vs. “time value”
  - “Fair value” is unclear to employees
  - Black-Scholes models were not relevant to employees

**Objective: Increase employee perceived value of options**

# The Google Solution

**Google developed an online auction allowing employees to sell their vested stock options in real time**

- Which options can be sold? Only those that are:
  - Vested, **and**
  - Granted post-IPO, **and**
  - Held by non-executives
- Bidders submit streaming real-time bids to all eligible stock options at all strike prices during
  - Normal market trading hours
  - Google's open trading windows

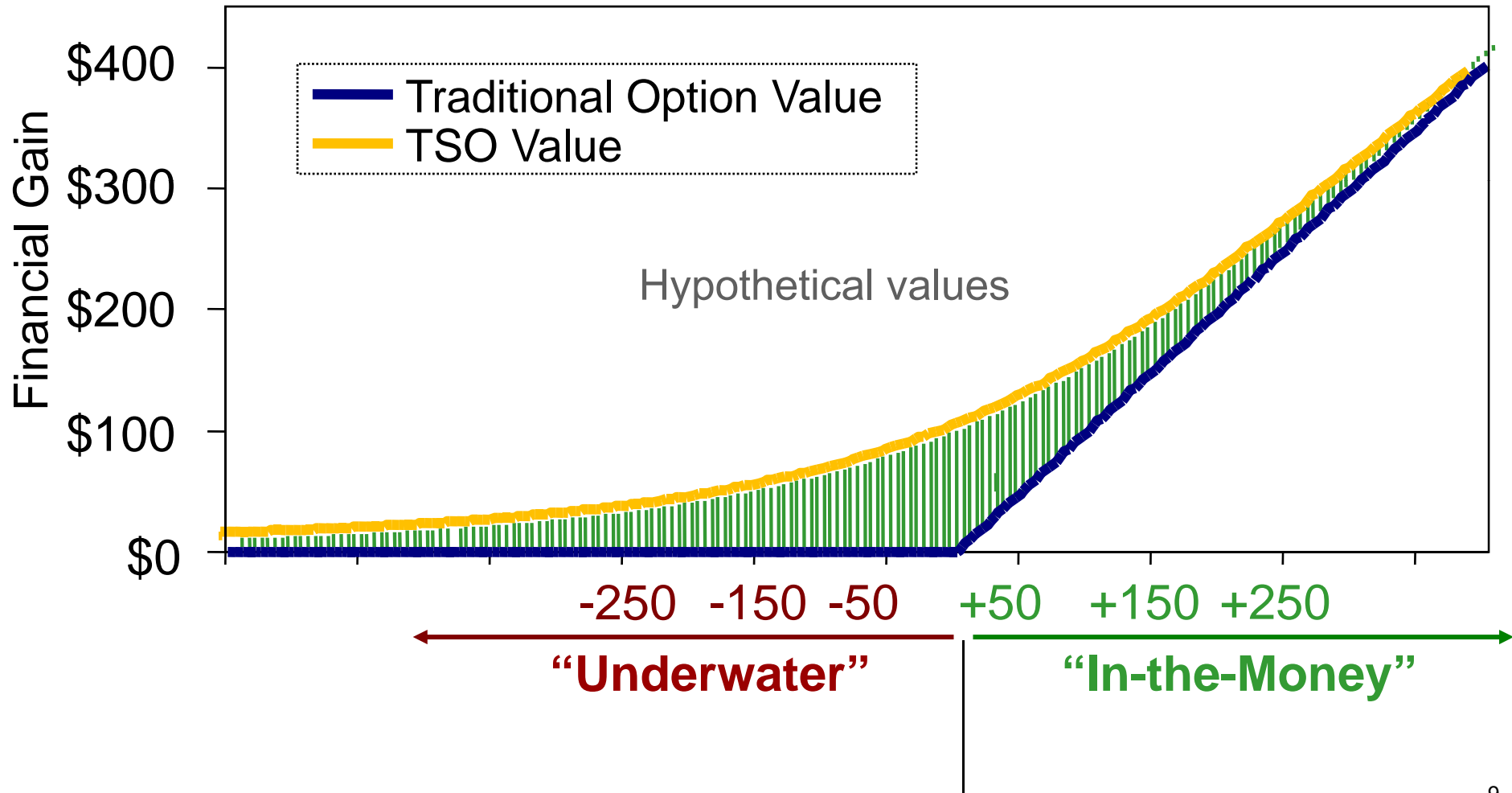
# The Google Solution

## How are options valued?

- Institutional investors will pay the full “fair value” today for the rights to purchase both the:
  - Intrinsic value of options (“in-the-money” value), *and*
  - Time value of options (potential future upside)
- HOWEVER, employees may only sell up to **two years** of the remaining option life
  - There is always an incentive to continue holding options
- Time value becomes more tangible to employees
  - Every option held is an option valued
  - Black-Scholes models become more relevant

# The Google Solution

How might TSO values look to employees?



# The Google Solution

## What are the company implications?

- More efficient use of equity compensation
  - Can have same tax and accounting impact with less dilution
  - However, per-share accounting costs increase
- Potentially reduced stock price volatility as a result of investor hedging activities
- Potentially greater overhang since we expect investors to hold options until expiration
- Happy employees and higher retention value since all options have a tangible value

# Legal Implementation Challenges

Legal Counsel

David Segre

Partner, Wilson Sonsini Goodrich & Rosati

## Implementation Hurdles

- **Is shareholder approval required to implement the program?**
  - *Does equity plan document specifically authorize the transfer to the financial institution?*
  - *Does equity plan document authorize the mechanical amendments necessary to modify options once transferred to the financial institution*
  - *Nasdaq / NYSE listing standards*
  - *Institutional Shareholder Services reaction*

# Tax Impacts

- **Section 83**
- **Section 422 (ISOs)**
- **Section 162(m)**
- **Section 409A**

## Financial Accounting Impacts of Program

- **Not a program like the one proposed by Cisco or implemented by Zions bank, which was intended to provide a valuation framework for options that is different (i.e., lower) than Black-Scholes**
- **Impact of Google program on accounting charges under FAS 123R**

## Final “Legal” Structure of Google’s TSO Program (Cont.)

- **New option grants**
  - *Registration of new option grants to employees on Form S-3*
  - *Sale of options by non-affiliate employees to financial institutions pursuant to Section 4(1)*
  - *Initial hedge of maximum number of shares underlying the option done on a registered basis*

## Final “Legal” Structure of Google’s TSO Program (Cont.)

- **Outstanding options**
  - *Unilaterally amended to add transferability features in reliance on Section 3(a)(9) – no Form S-4 or Schedule TO*
  - *Sale of options by non-affiliate employees to financial institutions pursuant to Section 4(1)*
  - *Initial hedge of maximum number of shares underlying the option done on a registered basis*
  - *If shares received upon exercise of the options by the financial institutions are not used to close out open hedging positions, the subsequent transfer of those shares would require registration or another exemption (not covered by GSII)*

# 1933 Act Issues

- **Google used Form S-3/ASR as a WKSI**
  - *Permitted to use pre-filing FWPs*
  - *Included multiple statutory prospectuses (one for optionees/other recipients of stock awards and one for each participating institution)*
- **Form S-8 registration statement no longer available for employees who decide to exercise their options and sell the underlying shares of common stock**

# 1933 Act Issues (Cont.)

- **Continuous shelf registration while TSO program is active**
  - *Black-out periods*
  - *Material information*
  - *Free writing prospectuses*
  - *Due diligence procedures*

# 1934 Act Issues

- **One auction manager**
- **Regulation ATS**
- **Regulation M – unresolved issue with SEC**
- **Quarterly disclosure of results of TSO program**

# SEC approvals and hedging requirements

TheCorporateCounsel.net

David Lynn:

Editor, TheCorporateCounsel.net (formerly with SEC's Division of Corporation Finance)

# Registered Hedging: Background

- The SEC Staff's evolving registered hedging positions were critical to implementing the Google TSO program
- History of the SEC approach on hedging:
  - Google TSO Program
  - Goldman Sachs interpretive letter from 2003
  - Microsoft Employee Stock Option Transaction from 2003
  - Goldman Sachs interpretive letter from 1999 re pre-paid variable forwards and Rule 144
  - Other similar situations

# Registered Hedging: Goldman Sachs II Letter

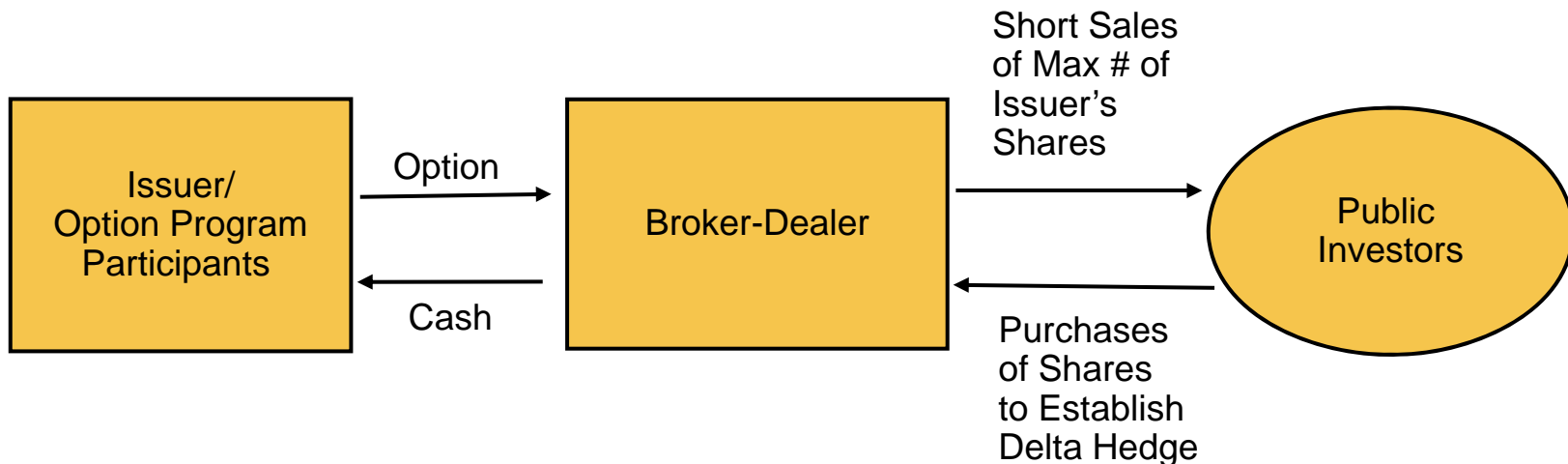
- The types of derivative contracts contemplated by the Goldman letter would generally:
  - provide for delivery by the issuer,
  - at some time in the future and based on a number of different pricing mechanisms,
  - of a maximum number of shares, or have cash or net physical settlement in amounts equal to such maximum number of shares

# Registered Hedging: Initial vs. Dynamic Hedging

- The Goldman interpretive letter draws a distinction between two aspects of the hedging activities conducted by the broker-dealer counterparty to the derivative contract:
  - the counterparty's *initial hedging* and
  - the counterparty's *dynamic hedging*

# Registered Hedging: Initial Hedging Transactions

- The *initial hedging* activity is the broker-dealer's offer and sale on behalf of the issuer (as an underwriter) of the maximum number of shares of stock deliverable under the contract into the market.

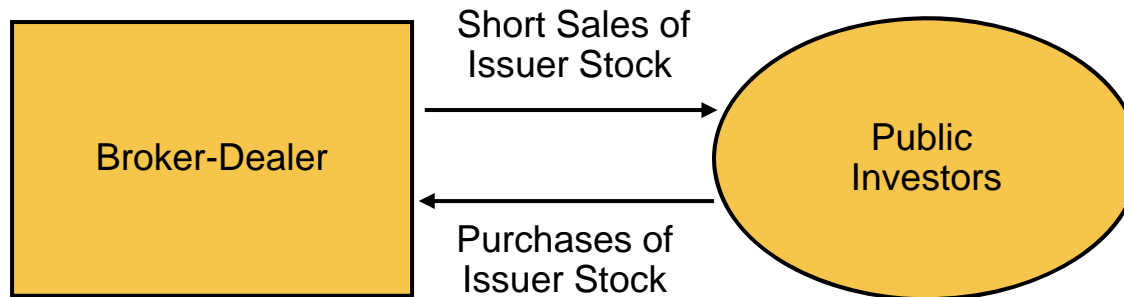


# Registered Hedging: Initial Hedging Transactions

- In these circumstances, the broker-dealer sells short the maximum number of shares deliverable pursuant to the derivative contract, and repurchases an amount of shares necessary to reduce the size of the hedge to the contemplated delta
  - These offers and sales would be covered by a registration statement and prospectuses would be delivered by the broker-dealer for such sales
  - The SEC views the sales of the maximum number of shares as a *primary offering* by the issuer through the broker-dealer counterparty acting as an *underwriter*

# Registered Hedging: Dynamic Hedging Transactions

- *Dynamic hedging* - after the sale of the maximum number of shares has been completed, the broker-dealer counterparty then may engage in additional short sales and repurchases of the shares in an effort to maintain the hedge of its exposure under the contract



# Registered Hedging: Dynamic Hedging Transactions

- The broker-dealer has an exemption for such transactions and the transactions are conducted such that:
  - they are solely at the discretion of the broker-dealer,
  - the terms of the derivative contract are not dependent on them,
  - the issuer has no economic interest in such transactions, and
  - securities related to the distribution are not used to settle any of these dynamic hedging sales

# Registered Hedging: Dynamic Hedging Transactions

- Under these conditions, the SEC Staff would not view the existence of the derivative contract as affecting the availability of the exemption, and:
  - the dynamic hedging transactions may be conducted without any further registration of the amount of securities involved in such transactions; and
  - no prospectuses need be delivered in connection with the dynamic hedging sales

# Registered Hedging: Closing Out Open Borrowings

- In addition, the SEC staff indicated the view that further registration or prospectus delivery is not required when:
  - The broker-dealer counterparty wants to close out open stock borrowings created in the course of its initial hedging activities, up to the maximum number of shares deliverable pursuant to the contract
  - Shares used to close out open positions can include: shares delivered on settlement by the issuer; shares purchased in the open market in connection settlement; or shares pledged or loaned by the issuer to the counterparty and then further loaned or borrowed by the counterparty

# Registered Hedging: Closing Out Open Borrowings

- The Staff's view on closing out open borrowings is consistent with the view that the distribution of the maximum number of shares has been registered as a primary transaction, so the covering with delivery of shares obtained from the issuer does not have a further market impact and would not be viewed as a separate transaction for '33 Act purposes.

# Registered Hedging: Highlights

- Provides a means for registration of the market transaction at the time of the initial hedging sales
- Permits broker-dealers to engage in necessary dynamic hedging and to close out open borrowings without concern for registration or prospectus delivery
- Automatic shelf facilitates ongoing registration of these types of transactions

# Technical Design and Implementation

Product Management

Chris Kovel

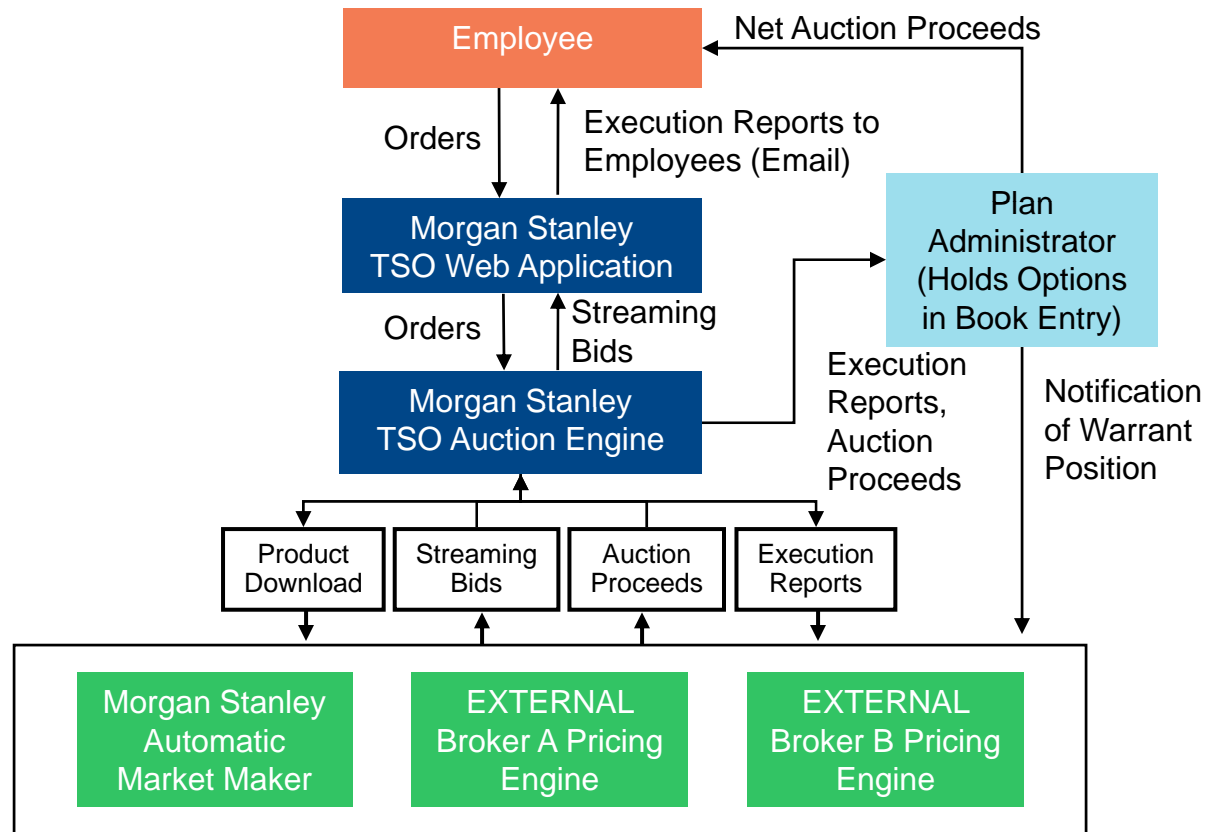
Executive Director, Information Technology, Morgan Stanley

# Employee Trading Platform

- Easy to Use
  - Employees submit sell orders from employee benefits website
  - Live, real-time quotes updated every second
  - Place market or limit orders
  - Sell any portion of vested options (e.g., 1 share or all vested shares)
  - Options sale proceeds deposited in employee bank account in normal settlement cycle
- Efficient trading platform
  - Continuous live auctions for every available employee option strike price from 9:30 am – 4:00 pm Eastern Time
  - Price employee sees is best bid from 5 bidders: Morgan Stanley, Citigroup, Credit Suisse, JP Morgan and UBS
  - Auction engine developed and maintained by Morgan Stanley (patent pending)

# Transferable Stock Options Program at a Glance

- Employees enter sell orders into the auction engine via a customized user interface
- Bidders enter quotes into the auction engine
- Bidders will be notified of auctions they've won in real time



■ TSO Auction Components   ■ Bidders   ■ Stock Option Plan Administrator

# My Account: Overview

- Under My Account, employees can see their entire portfolio of employee options
  - Only vested options can be sold in the system
  - The system determines the intrinsic value of all eligible options, if exercised, at current market prices
  - The 'Estimated Gross TSO Proceeds' are projected TSO total proceeds

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**My Account :: Overview** MS \$79.00 +\$1.03  
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**Summary of TSO Holdings**

Option Grant ID	Award Date	Option Expiration	Next Vesting Date	Next Vesting Amount	Strike Price	Options Granted	Vested Options	Unvested Options	Intrinsic Value Of Vested Options @ \$79.00	Estimated Gross TSO Proceeds	
										Vested	Unvested
03-2896	18-Aug-1998	18-Aug-2008		0	\$45.00	200	200	0	\$6,800.00	\$7,170.00	\$0.00
03-2882	11-Dec-2004	11-Dec-2014	11-Dec-2006	200	\$45.69	1,000	400	600	\$13,324.00	\$13,864.00	\$20,796.00
03-2870	31-Mar-2005	31-Mar-2015	31-Mar-2007	100	\$46.72	2,000	1,500	500	\$48,420.00	\$48,915.00	\$16,305.00
03-2909	18-Apr-2005	18-Apr-2015	18-Apr-2007	300	\$49.14	1,600	100	1,500	\$2,986.00	\$3,093.00	\$46,395.00
03-2874	11-May-2005	11-May-2015	11-May-2007	450	\$49.89	1,400	100	1,300	\$2,911.00	\$3,039.00	\$39,507.00
03-2863	31-Jul-2005	31-Jul-2015	31-Jul-2007	50	\$61.00	700	200	500	\$3,600.00	\$3,794.00	\$9,485.00
98-500	18-Aug-2005	18-Aug-2015	18-Aug-2007	500	\$75.00	2,000	500	500	\$2,000.00	\$3,450.00	\$3,450.00
98-22	11-Dec-2005	11-Dec-2015	11-Dec-2006	400	\$83.13	3,000	0	3,000	\$0.00	\$0.00	\$40,500.00
03-1264	31-Mar-2006	31-Mar-2016	31-Mar-2007	100	\$91.00	2,000	0	500	\$0.00	\$0.00	\$4,600.00

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**For financial advice or technical assistance, call 1-800-555-1212**

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# My Account: Sell Options

- Under the Sell Options tab, employees can choose which of their eligible options they would like to sell
- Only limit orders and market orders are permitted
  - Limit orders are only sold if the prevailing bid price is at or above the limit price
  - Market orders are sold at the prevailing market price upon submission during market trading hours
- Employees will be required to enter a Trading Pin to submit their orders.

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### My Account :: Sell Options

Overview of Option Holdings					Estimated Vested			Place Your Order				
Option Grant ID	TSO Option Expiration	Strike Price	Vested TSO Option	Intrinsic Value of Vested Options	TSO Option Proceeds	Indicative Price	Today's Change	Order Type	TSO Options to Sell	Limit Price (\$)	Limit ** Expiration	Potential Gross Proceeds
03-2896	18-Aug-2008	\$45.00	200	\$6,800	\$7,170	\$35.85 ↑	+\$0.02	Select			Select	
03-2882	21-Nov-2008	\$45.69	400	\$13,324	\$13,864	\$34.66 ↑	+\$0.02	Select			Select	
03-2870	21-Nov-2008	\$46.72	1,500	\$48,420	48,915	\$32.61 ↑	+\$0.01	Select			Select	
03-2909	21-Nov-2008	\$49.14	100	\$2,986	\$3,093	\$30.93	-	Select			Select	
03-2874	21-Nov-2008	\$49.89	100	\$2,911	\$3,039	\$30.39 ↓	-\$0.02	Select			Select	
03-2863	21-Nov-2008	\$61.00	200	\$3,600	\$3,794	\$18.97 ↓	-\$0.01	Select			Select	
98-500	21-Nov-2008	\$75.00	500	\$2,000	\$3,450	\$6.90 ↓	-\$0.03	Select			Select	
											Total:	

Telephone #:  Trading Pin:

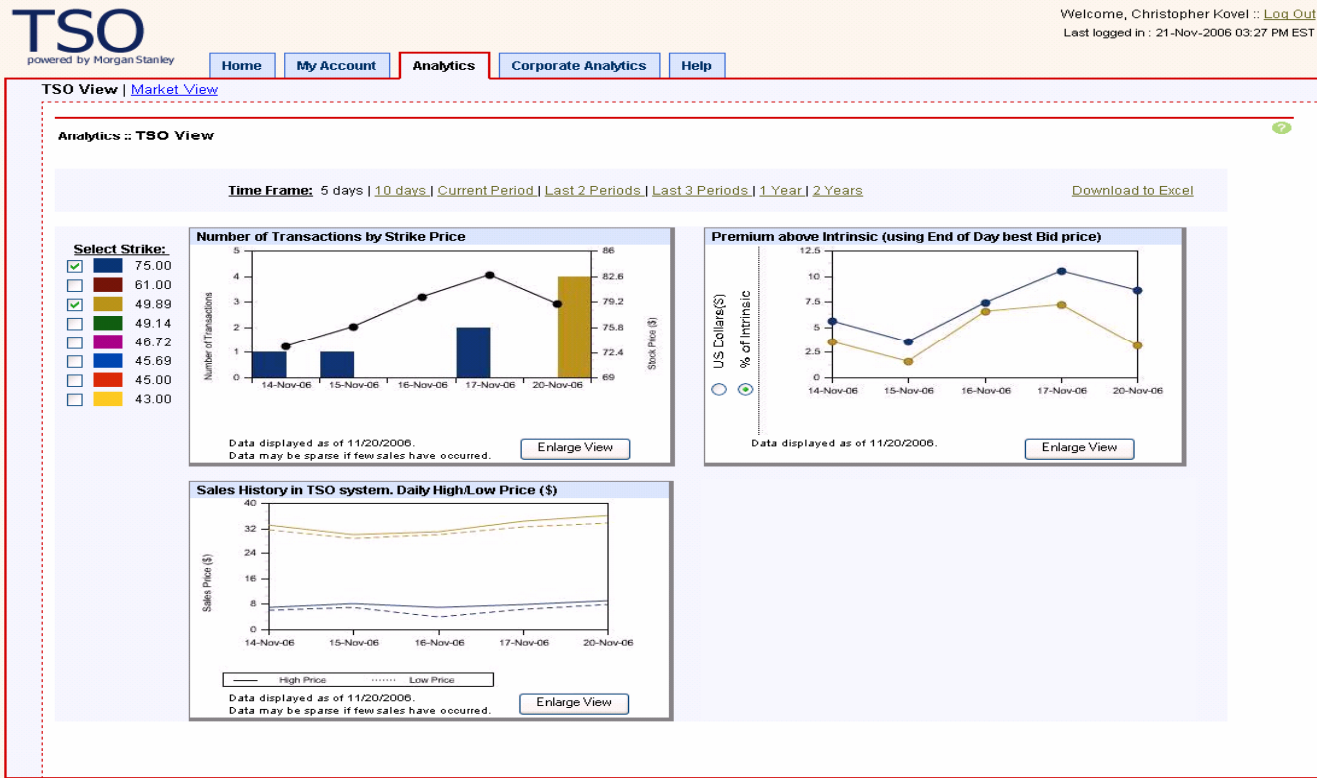
■ Each order may contain up to 1,000 options.  
\*\* End of Day limit expiration is 07-Dec-2006. End of Period limit expiration is 31-Dec-2006. Expiration dates may change without notice.

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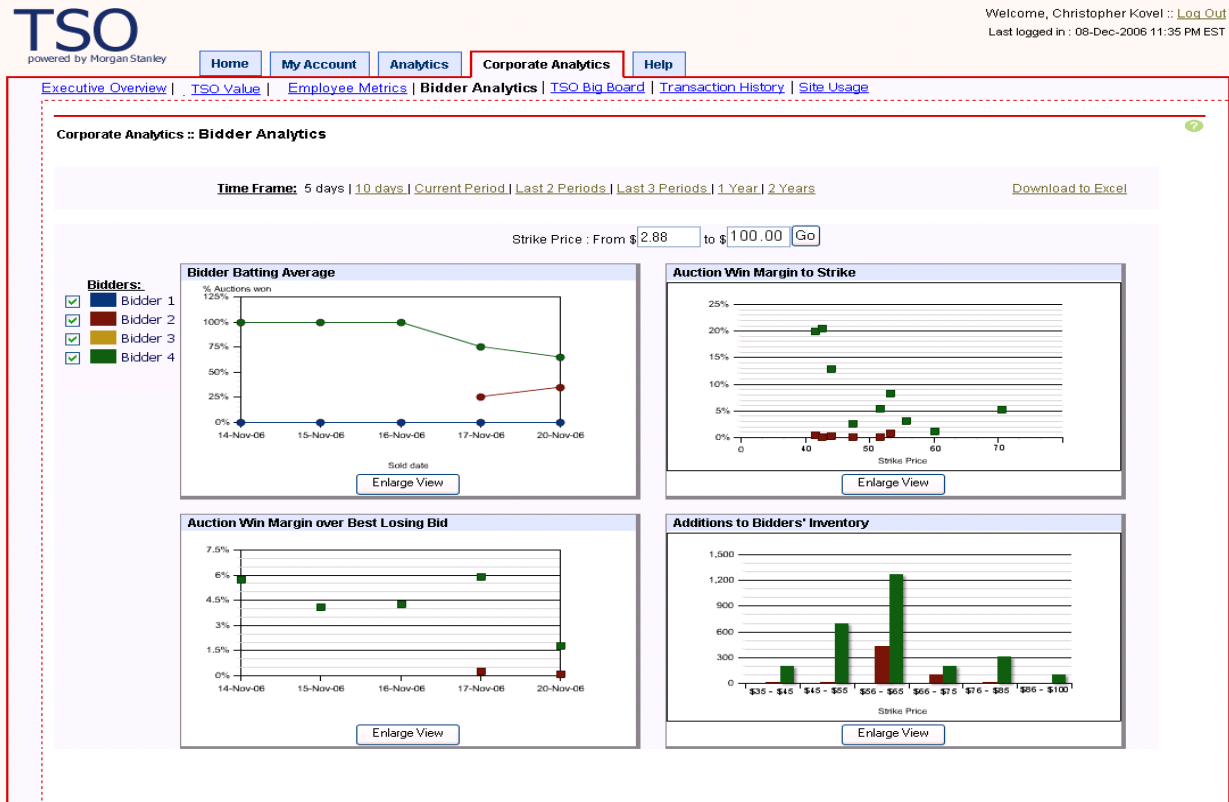
# Employee Analytics Tab

- Employees have a view into the auction activity of their options with the Analytics tab
  - They can see transaction volumes of their options
  - Analyze which of their options return the best premium (\$ above intrinsic)
  - Analyze which of their options have the closest spread between the high and low price



# Corporate Analytics Tab

- Corporate Analytics provides transparency into your company's TSO auction system:
  - The executive overview provides summary statistics across the auction
  - The TSO Value provides statistics on the value your employees have received by using the TSO system
  - The Employee Metrics helps measure the success of your marketing campaigns among the employees
  - The Bidder Analytics (shown below) allows the corporations to see the fairness of bids coming in on their strikes
  - The TSO Big Board shows live prices at every strike and winning bidders
  - The Transaction History provides the corporate a download of all transactions done in the TSO
- The Corporate Analytics is restricted to the executive compensation team.



## Efficient Auctions : The Bidding Rules

- Sample TSO Bidding Rules
- Bidders must provide a price for all outstanding employee options
- No options may be sold for less than intrinsic value
- Options sold to highest bidder
  - Employees view high bids for their strike prices through system website
- When options are sold, all bidders must refresh their bids before next round of bidding can continue
  - Update required within seconds
  - Minimum of 1,000 options per strike price in Google's case
- Sell orders processed by strike price on a first in, first out basis

# Employee Maintenance and Bidder Warrants

Plan Administration

Matthew Conner

Citigroup Smith Barney

# Google: TSO Program Acceptance and Use

Google

Ronni Horrillo

# Google Notification

Google has filed a registration statement (including a prospectus) with the SEC for the offering to which this communication relates. Before you invest, you should read the prospectus in that registration statement and other documents the issuer has filed with the SEC for more complete information about Google and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at [www.sec.gov](http://www.sec.gov). Alternatively, Google will arrange to send you the prospectus if you request it by calling toll-free 1-866-468-4664 or sending an e-mail to [investors@google.com](mailto:investors@google.com).

## Anticipating Next Year's Option Awards: A Thought Piece About Capturing Option Value

New York  
March 28, 2007

Difficulty in measuring the value of employee stock options, and inequality between option expense and the perceived value to employees, underlie the long public debate about equity compensation accounting.

Two recent developments are linked in a way that should cause financial and human resources executives to think – creatively and outside the box – about their option programs. The developments open up an opportunity for companies to be straightforward, objective and transparent about the cost of options and to offer options that have the same perceived value to employees as the expense required to be booked.

### Zions Bancorporation's ESOARS

On January 25, 2007, the SEC's Chief Accountant wrote to Zions Bancorporation about Zions' "ESOARS" product. ESOARS (an acronym for "Employee Stock Option Appreciation Rights Securities") are derivative securities designed to provide a market basis for estimating option fair value. The idea is that the value derived from purchases and sales of the ESOARS would be used as the basis for recording stock option expense under FAS 123R, rather than a value derived from a Black-Scholes or other formulaic approach.

The Chief Accountant's primary concern with market-based methodologies using derivative securities to estimate option fair value is whether the prices paid in particular market transactions genuinely indicate fair value. First, the derivative security must be designed so that it properly reflects the value of the underlying referenced employee stock options. Second, the trading market for the derivative security has to reflect arm's-length free market principles. A limited number of bidders, limitations on information available to bidders, limited liquidity in the secondary market or other factors might distort the prices paid and therefore cause them not to reflect a fair value for the underlying referenced options.

The SEC's letter to Zions was favorable, but noncommittal. The letter states that "the SEC staff concurs with your view that the ESOARS instrument is sufficiently designed to be used as a market-based approach to valuing employee share-based payment awards under Statement 123R." However, the letter also notes that "two factors in your first auction (the two minute rule mechanism, and technological delays) may have contributed to a market clearing price for ESOARS that may have not been representative of the fair value of the underlying employee share-based payment awards," and it concludes that "the SEC staff recommends, therefore, that each ESOARS auction be analyzed to determine whether it results in an appropriate market pricing mechanism."

Shortly after the letter was released, the general counsel of the Council of Institutional Investors, a shareowner-rights organization, objected to the SEC's letter to Zions and expressed a policy concern about the effect of ESOARS in connection with the very hot topic of excessive executive pay. The CII letter stated that "it appears that Zions' experience to-date is that the ESOARS produce a value far below that produced by the well known, and Securities and Exchange Commission staff approved, modified Black-Scholes-Merton model. It has been reported that Zions' vice president has boasted that 'companies using Zions' auction system can reasonably expect *to add back as much as half of their options expenses to pretax profits.*" As the options actually issued to employees are unchanged, the main motivation for a company to conduct an ESOARS auction appears to be to obtain a lower expense for the options granted.

The SEC's response to CII elaborates on the reservation included in its prior letter to Zions: "the propriety of using a market instrument for financial reporting purposes is dependent upon the design, implementation, and marketing of the instrument. A company and its auditor will need to carefully analyze the results of each sale transaction, ensuring that a market pricing mechanism and credible information plan are present (both of which were discussed in a September 2005 memorandum issued by our Office of Economic Analysis). The factors that would need to be considered to ensure that the auction process results in the sale of market instruments at what can truly be deemed market prices include, but are not limited to, the size of the offering relative to market demand, the number and characteristics of participants (bidders), the functionality of the technology, and purchaser perceptions concerning costs of holding, hedging, or trading the instrument." Companies will have to carefully consider how to proceed with ESOARS-like approaches in light of this guidance.

#### Google's Transferable Stock Option Program

In February, Google filed a prospectus supplement with the SEC concerning amendments to its stock option program to make stock options granted to employees transferable. The amendments were rolled out on a test basis for twenty employees initially, and were expected to be introduced company-wide in April.

Google's employee stock options previously provided the normal benefit to employees, based on appreciation in the Google stock price. As explained on Google's blog, "with the new [transferable stock options], employees will have an additional alternative: they can transfer (sell) their options to a financial institution through a competitive bidding process. In addition to increasing the value of every option employees receive, the TSO program makes the value of their options much more tangible. In the past, employees typically valued Google stock options based simply on the difference between their option exercise price and the current market stock price (called the intrinsic value). Since Google grants options with exercise prices that are at, or above, the market price of Google stock, many employees do not value options on the day they are granted. By showing employees what financial institutions are willing to pay for their options, it is made clear that the value of their options is greater than just the intrinsic value."

Google's amended options have economic characteristics that are a hybrid of options and restricted stock. That is, transferable employee stock options have the leveraged upside return potential of stock options, but also have value to the employees if the underlying stock price stays flat or declines, as is the case with restricted stock. The hybrid payout profile fits nicely, from Google's perspective, with the general trend in compensation design away from programs that rely exclusively on stock options and towards programs that use a combination of options and restricted stock. This trend was of course accelerated by the loss of prior accounting benefits for options under FAS 123R, but also reflects a determination that combining employee stock options and restricted stock is a better way to retain, incentivize and compensate executives. Among other benefits, it mitigates the issues that arise when employee stock options are deeply underwater and are viewed as having virtually no value, while the employer continues to book the expense and the option overhang factors into investor perceptions of the stock.

The IRS recently issued a private ruling that appears to relate to the Google program. The ruling is based largely on the fact that the options are not transferable until vested. The ruling concludes, in effect, that since the options are not immediately transferable the options are not taxable to employees at the time of grant. Rather, the options are taxable to an employee when he or she sells or exercises the option, consistent with the tax treatment of non-transferable employee stock options. Although the tax result is not surprising, the vesting provision is important to note. Without delayed vesting, the tax rules might be interpreted to require that employees recognize taxable income in respect of the option immediately at the time of grant. Furthermore, immediate vesting would eliminate most of the incentive and retention value of transferable options, because employees could sell them upon grant, which they would of course be motivated to do in order to pay the tax.

### The Link Between ESOARS and TSOs

In considering the Zions and Google developments together, the obvious question is whether companies can use the value derived from transferability of employee stock options to measure compensation expense for accounting purposes. Such a system should provide a correspondence between the value expensed for the options and the value of the options to the employees, a correspondence that is missing under current practice and rules. The principal gap is that FAS 123R requires a fair value at the time of grant, and Google's transferable options are not transferable until they vest.

The design feature that would link these ideas is, perhaps, also obvious. Rather than relying on the prices at which employees sell transferable stock options to establish option fair value, there must be sales of the options at the time the options are granted. The solution is to have the options issued by a financial institution, rather than the employer, and sold by the financial institution to the employer. Here is how it could work.

E, the employer, plans to grant one million employee stock options to its employees. Traditionally, E has granted stock options that have a term of up to ten years and an exercise price equal to the closing price of E's stock on the grant date, and vest over four years. E's options traditionally terminated 90 days after termination of employment for any reason, other than for cause, in which case they terminated immediately. E could replicate these terms, as follows:

- F, the financial institution, would sell to E ten-year options to purchase from F one million shares of E stock with an exercise price equal to the closing price of E's stock on the sale date (we refer to these as the "FIOs," or F-issued options).
- E would immediately distribute the FIOs to E's employees.
- If an employee terminates employment with E within four years from the grant date or is terminated for cause, the employee would be required to return the FIOs (or a portion thereof based on the vesting schedule) to E.
- The FIOs would be transferable in the same manner as the Google options. That is, after the FIOs vest an employee could transfer the FIOs to F or a different financial institution. Just as in the Google program, a competitive bidding process will ensure that employees get a fair price for FIOs offered for sale.
- FIOs could also be exercised for stock, as with traditional employee stock options, but employees would not be expected to exercise because the sale value will almost always be greater than the spread on exercise.

- Upon termination of employment other than for cause, employees could be required to sell their vested FIOs within 90 days (which reflects current practices), or could be permitted to keep their FIOs (based on the perspective that they had been fully earned). If the former design were to be adopted, after the expiration of the 90-day period any FIOs still held by an employee would revert to E. Also, since FIOs would have value even if underwater, employees who terminate employment at a time that they hold vested FIOs and who are not permitted to retain the FIOs until expiration would be expected to sell all of their FIOs within the 90-day period.
- FIOs forfeited by an employee to E as a result of termination prior to vesting or for cause would be owned by E. E could hold the FIOs for their full ten years to get the full benefit of the ten-year option that it purchased from F. Alternatively, E could sell FIOs in the same competitive bidding process available to employees at any time prior to their expiration.

The foregoing is a basic outline of a transferable option program that seems to produce a market basis for determining the fair value of the options – namely, the price paid by E to F for the FIOs. Why would E want to spend cash to purchase options to be granted to employees, when E can write those options itself without having to use any cash? There are at least three reasons:

- First, to provide greater certainty and transparency about the cost of E's stock option program and to align the reported expense with the benefit delivered to employees.
- Second, like many employers, E may already be spending cash by buying back stock in the market in order to counter the dilutive effect of its employee stock options. Under the proposed design, E would never issue new shares or deliver shares out of treasury, so there is no dilution to counter. In some cases, the cash saved may exceed the cash to be paid by E for the FIOs, depending on projected run rates, stock prices and other assumptions.

Since E would reduce or eliminate its stock buybacks, would the favorable impact of such buybacks on the market price of E's stock be foregone? Not necessarily. Since F has issued options to purchase E stock, F will be in the market hedging that position by buying stock. Although the market impact of F's hedging activity may not have precisely the same effect as E's stock buybacks, the hedging activity, together with the absence of dilution from the delivery of shares in connection with the exercise of options, should have a similar impact.

- Third, since the FIOs are not dilutive there should be a favorable impact on fully-diluted earnings per share reported by E. This consequence is separate from the

effect on the expense required to be reported arising from the grant of the FIOs themselves.

Since E's purchase of FIOs from F involves the actual equity award that is being granted, the design described above would seem to raise no concerns about whether the transaction fairly reflects the value of the award. In particular, the design would seem to eliminate the concerns about ESOARS, or similar instruments, not being properly designed to reflect the price of the underlying employee stock option. Moreover, the design should avoid concerns about whether the price paid in the transaction reflects a fair value for the FIOs. F is presumed to be an institution that is actively engaged in the business of selling over-the-counter options in the regular conduct of its business, and it should be well able to determine how much it can sell them for and will be highly motivated to get the best – that is, highest – price for them. E, by contrast, is highly motivated to pay the lowest price it can for the FIOs, and there are many financial institutions to which it could turn in order to ensure that it does not overpay. The design also eliminates any need for F to be concerned about facts that might be unique to E and its employees, such as the rate and timing of option exercises or forfeitures. This is because F has written ten-year options, and the holder of the option, be it E, an employee to whom the option was granted or another financial institution that bought the option from E or an employee, is entitled to the benefit of the option unless and until F buys it back. Accordingly, concerns about whether the price paid for the FIOs is affected by information flow about future events particular to E would also be eliminated.

### Conclusion

The design described above raises many legal and accounting issues. We've considered the legal issues extensively, and the accounting issues have been preliminarily reviewed with the SEC. Any employer that desired to adopt the design, and any financial institution that sought to participate in the program, would probably seek prior regulatory approval with regard to the accounting and some of the legal issues. Nevertheless, the potential benefits seem large compared to the legal and accounting hurdles.

Please feel free to call your regular contact at the Firm, or any of the lawyers listed in the Employee Benefits section of our website, if you would like to discuss these issues further.

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## Google's Transferable Stock Options

### Google's TSO Program

Add one more to Google's well-publicized employee perks, e.g., free cafeteria, free child care and onsite laundry facilities, flexible work hours, etc.

In December, Google announced a program, developed with Morgan Stanley, enabling employees (excluding executives and directors) to sell their vested stock options to financial institutions via a continuous, real-time, online auction (Morgan Stanley is actually seeking a patent on the auction system); Google's transferable stock options can be sold only via the auction. The program covers extant options as well as future grants, but excludes Google's pre-IPO grants and any options assumed in a merger, etc. Employees still have the choice of exercising their options in the traditional manner, but now can increase their gain by instead selling their options.

The auction started up on April 23 (with Google's "window" period following announcement of its Q.1 results on Friday, April 20). [Window periods generally start a business day or two after the earnings release. With today's free, instant EDGAR availability (and required 8-K filing of earnings releases), some companies might consider opening their window immediately, but there would still be a perception problem (*i.e.*, that insiders with prior knowledge are advantaged until the announcement is fully disseminated).]

### Incremental "Exercise" Proceeds

Because the option sale price includes both the intrinsic value (*i.e.*, spread) of an option at the sale date (which, of course, is what employees typically realize on option exercises) and value for the remaining time that the option can be exercised (up to a maximum of two years—see below), employees should almost always be able to realize more by selling their option than by exercising and selling the stock. In fact, the auction has a

built-in "reserve" feature that accepts only bids that exceed the intrinsic value (for underwater options, however, that would theoretically permit a bid of zero). Google says it will summarize the results of the program quarterly beginning with its Q.2 Form 10-Q; hopefully, the summary will show the amounts the program is yielding in excess of the option spread.

Google acknowledges in its stock plan prospectus (since Google is now using SEC Form S-3, not S-8—see pg 6, its offering materials are actually filed with the SEC) that grant date values derived by Black-Scholes for accounting purposes typically exceed the "true value" of options to the employee. (See, generally, the Risk Factors relating to the TSO program, at pgs 3-5 of Google's stock plan prospectus.) The TSO program is designed to reduce that gap by increasing the amount employees can realize from their options (even though it is unlikely that TSOs can be sold for the full Black-Scholes value, calculated at the time of sale).

A perception problem that companies may need to address is employees' expectation that the sale price obtainable in the auction may equal, or even exceed, Black-Scholes. [While Black-Scholes values normally aren't communicated to employees, it may be possible to extrapolate the grant date value of individual grants from the FAS 123(R) footnote in the financial statements. Some companies actually include the Black-Scholes value when presenting option grants to employees, both to demonstrate value and to help explain how the number of shares was determined.] However, because options cannot be sold until vested, there normally will be a significant time gap between 123(R) valuation and sale price quotes for an option.

### Online Auction

The auction is managed by Morgan Stanley, which also is a bidder for the options purchased. The other potential bidders are financial institutions and other institutional investors, chosen at

**2** Google's "sole discretion." Initially, there are three other bidders (Citigroup, Credit Suisse and UBS).

Buyers are not allowed to further sell or transfer their options, so no secondary market can exist for options sold in the program. Buyers typically will hedge their financial risk (*i.e.*, from buying and holding the options) via short sales of Google stock (effected immediately upon purchase of an option). There must be a minimum of two bidders for any bid to be conveyed, but there is no SEC requirement here for an open auction *a la* the Zions program featured in our March-April 2007 issue, in that Google's program is not intended to establish evidence of fair value for 123(R) purposes.

Each employee who enrolls in the TSO program can (i) access their own page on Google's internal online system that shows the current high bid offered for their vested options (bids are updated approximately every 30 seconds), as well as (ii) submit sale orders (either a "market" order, or a "limit" order specifying a minimum sale price). Bidders must bid for all options in the program. Participating employees can still elect traditional option exercise at any time, and those who don't enroll upfront can do so later at any time.

Morgan Stanley expects to offer the TSO auction program to other companies down the road. And, of course, other investment banks may sponsor similar programs.

Underwater Options. Because the program encourages employees to focus on the overall value of their options, not just the intrinsic value/spread, even underwater options can now have a positive/retention effect. (Although Google mentions a potential opposite effect, *i.e.*, that options might be sold soon after going underwater, thereafter having no further retention, etc. effect.) Microsoft demonstrated, with its one-time transferable option program in 2003, specifically designed to facilitate sales of its underwater options (see our September-October 2003 issue at pg 1), that financial institutions are willing to buy underwater options. Ditto, Comcast in 2004.

Terminated Employees Excluded. Only current Google employees are entitled to participate in the program. After termination of employment (presumably, that means after termination of service, and not during the period between notice of termination and actual termination of service), optionees are limited to traditional op-

tion exercises (*e.g.*, cash and same-day sales). There may be a potential litigation concern here, in that an employee terminated by the company may feel deprived of incremental value.

Moreover, no option with less than six months until expiration can be sold in the program, even by current employees. Presumably, this is because the limited period eliminates virtually all of the time value associated with the option, making sale of the option not worth the administrative hassle (*vs.* exercise and sale of the shares).

### *Program Does Not Establish Fair Value for 123(R) Purposes; Google's 123(R) Values Will Actually Increase*

Although several companies and institutions (*e.g.*, Cisco and Bear Stearns—see our September-October 2006 issue at pg 9) have proposed (but, none has yet received Staff blessing of) sale by the company to investors of various types of transferable options that could be used to establish 123(R) fair value for contemporaneously granted options, Google's TSO program is not designed for this purpose. Since employees will not be able to sell their options prior to vesting, any value established by a sale would be too late to be used for 123(R) valuation (in fact, the sold portion of any option would have been fully vested and expensed by then).

The sale price of a TSO (including the time value aspect) depends in large part on stock price changes and other factors occurring after the grant date, which are irrelevant to grant date valuation. Google will continue to value its options at grant using Black-Scholes. [We wonder whether, down the road, if TSO sales reflect prices considerably below the Black-Scholes value (at the time of sale), Google might attempt to use that input to reduce future grant date values. Google says that TSO sales ultimately could provide "observable market prices" relevant to 123(R) grant-date valuation. In that event, we think the regulators would have concerns with, *e.g.*, the openness of the auction program.]

Transferability Lengthens the Expected Term to the Full Contractual Option Term, Increasing 123(R) Fair Value. As our readers may recall, the traditional Black-Scholes model, used to value *traded* options, incorporates the *contractual* term of the option. For employee stock options, the Black-Scholes model has been modified to incorporate instead the *expected* term, *i.e.*, the length of time until the option is expected to be exer-

cised. (See the July-August 1993 issue of *The Corporate Counsel* at pg 1.) This modification of Black-Scholes is in recognition of the fact that, because employee stock options traditionally are not transferable, employees are likely to exercise them before they reach full maturity.

Where options are transferable, however, this all goes out the window, in that there is less (or no) reason for the options to be exercised prior to maturity. [The only exceptions might be for options that are steeply in the money (the more in-the-money an option is, the less proportionately its time value), options that are close to expiring (since there is little time value), or options on dividend paying stocks, which Google is not (so the option holder can begin receiving the dividends).] Thus, in valuing its TSOs, Google would assume an expected term equal to the full contractual term of the option (ten years, unless Google shortens the term of TSOs).

This could significantly increase the 123(R) fair value of Google's option grants going forward. Thus, for its (non-transferable) grants in 2006, Google assumed a weighted average expected term of about four years, expected volatility of 34%, and an interest rate of 4.7%. At a stock price of about \$500 per share, this results in a Black-Scholes value of about \$170. If forced to assume a term of ten years, the Black-Scholes value would be about \$270 (an increase in stock option compensation expense of almost 60%).

Conversion of TSOs Upon Sale to (Common Stock Purchase Warrants with) Maximum Term of Two Years. To mitigate this effect, the TSO program provides that the contractual term of any transferred TSO will upon transfer be reduced to a maximum of two years (if the option term remaining at the sale date is less than two years, the term upon transfer is shortened in six-month increments; e.g., 23 months remaining becomes 18 months upon transfer); with Microsoft's 2003 option sales, the option term was shortened to three years post-transfer. Shortening the term post-transfer allows Google to assume upfront an expected term of six years instead of ten (the four years the employee is expected to wait before selling the option—presumably, employees are assumed to sell at the same time they previously would have exercised—plus the two-year post-transfer contractual term), resulting in a Black-Scholes value of about \$210 (an increase of about 25% instead of 60%).

Moreover, upon sale, any remaining forfeiture provisions of the option are no longer applicable

(Google says termination of employment is an example here, *i.e.*, the post-termination exercise period cutoff wouldn't apply; at some companies, a non-compete forfeiture provision would be another example of the type of provision that would no longer be applicable.) Ditto, any acceleration of expiration (e.g., upon a change of control) would be inapplicable. And, anti-dilution provisions typical of traded call options go into effect.

123(R) Impact of Modification of Existing Employee Options. Google is not only including the transferability provision in all new grants to eligible employees, but is also providing transferability for all post-IPO grants held by eligible employees. Amending the extant options is a "modification" under 123(R). Under 123(R), as we have discussed, Google would compute the value of the options just before and just after the modification and recognize any resulting increase in value as incremental expense. Here, the increase in fair value will be the impact of the longer expected term (by two years), as discussed above.

Google discloses a current (*i.e.*, 2007 Q.2) 123(R) charge of \$90 million for the modification of options that are already vested, and anticipated future charges of an additional \$170 million over the remaining vesting periods. [Apparently, Google decided to amend all eligible options upfront, rather than take the administratively—and legally, see *Does Modification of Existing Options Involve A Tender Offer?*, pg 6—more complicated route of modifying only the options of employees enrolling in the program or those actually desiring to sell an option; waiting to modify until an employee decides to enroll/sell might well result in even higher charges down the road, *i.e.*, where the stock price has increased. Google may have concluded that, in any event, merely allowing employees to transfer their option *de facto* modifies all options that qualify to be sold.]

That Google has seen fit to incur \$260 million of charges in order to apply the TSO program to extant options (rather than just to new grants going forward) may be a testament to the marketplace's willingness to separate out cashless stock option charges (especially, where non-recurring); thus, the \$90 million Q.2 charge would reduce Q.2 operating income by approximately 12% based on Q.1's income level. As our readers know, we applaud disclosure of stock

- 4 compensation accounting effects (see the May-June 2005 issue of *The Corporate Counsel* at pg 10), whether in a proxy statement soliciting approval of a plan or a stock plan prospectus.

### *Income Tax Treatment*

Sale of Option. The entire gain realized by an employee on the sale of a TSO (not just the market spread on the sale date) is compensation income to the employee, subject to W-2 reporting and withholding. For example, assume an employee holds a TSO to purchase 1,000 shares at an exercise price of \$400 and that the current market price of the stock is \$500. A traditional exercise would result in W-2 income of \$100,000 (transferable options obviously are not eligible to be ISOs), with tax liability of \$36,450 (setting aside state taxes and assuming the highest marginal rate of 35% for FIT and only the 1.45% portion of FICA/Medicare), with withholding due of \$26,450 (25% of \$100,000—see our November-December 2006 issue at pg 10—plus 1.45%).

With the new auction program, the option might instead be sold for, say, its then Black-Scholes value, approximately \$166 per share, assuming the 34% volatility Google used for its 2006 grants and a remaining expected term of two years (which is what the bidding financial institution would use in valuing the option, since the option term will be truncated to two years upon transfer). The employee would receive and recognize \$166,000 (instead of \$100,000) of compensation income, resulting in an actual tax liability of just under \$62,000 (and approximately \$44,000 withholding).

We use the Black-Scholes value here for illustration purposes only. It is unlikely that a financial institution would actually be willing to pay full Black-Scholes (even though, as we have off-discussed, the spread of an in-the-money option doesn't increase Black-Scholes value dollar-for-dollar, in that, as the spread/discount goes up the time value component goes down). The financial institutions participating in the auction are expected to develop their own pricing models; thus, the price they are willing to pay may be significantly less than Black-Scholes, as evidenced by the results of Zions' first ESOARS auction (see our March-April 2007 issue at pg 1) and the results of Microsoft's 2003 program. A hypothetical that Google uses in its offering materials is a sale price of \$184 for an option with a spread of \$143, an approximate 28% premium (the hypothetical doesn't provide enough information to

extrapolate a Black-Scholes value). It will be interesting to see the actual results.

If, instead of selling the option, or exercising and selling the stock immediately, the employee were to exercise with cash and hold the stock for more than one year, the post-exercise appreciation would be subject to long-term capital gain rates. Say, the employee sells the stock then for \$566, essentially realizing the additional \$66 per share that s/he would have gotten by selling the option a year earlier. The tax liability on the additional \$66,000 of profit is \$9,900 (at the maximum 15% LTCC rate), resulting in a total tax liability (including the tax due at exercise) of \$46,900 instead of \$62,000. [For most, this cash exercise analysis is unlikely to be relevant, since few employees have the financial resources to engage in cash exercises (especially at Google's stock prices) or to bear the market risk of owning the stock for a year. Even where the employee has the resources, the potential tax advantage probably doesn't justify the level of risk involved and carrying costs for the exercise.]

The company's tax deduction in all scenarios equals the employee's W-2 amount; thus, the company's incremental tax savings (from TSO sales vs. traditional exercises) mitigates to a modest extent the above mentioned incremental accounting cost incurred for TSOs (see our January-February 2005 issue at pg 1). Following sale of an option in the auction, there are no further tax consequences to the employee or the company.

Grant and Vesting of TSOs; Modification of Outstanding Options. Apparently, Google has obtained comfort (a Private Letter Ruling?) from the IRS that neither the grant nor vesting of transferable stock options constitutes a compensable "transfer" to the employee of "property" with a "readily ascertainable fair market value" within the meaning of IRC §83 and Regs. Under PLR 9616035, there is no taxation on grant of a transferable employee stock option. (See our May-June 1996 issue at pg 6.) Similarly, per Microsoft's PLR 200414007, the amendment of outstanding options (even vested tranches) to add transferability does not create any taxable income until the option is sold. (See our May-June 2004 issue at pg 6.) Even if TSOs were deemed to accrue a readily ascertainable fair market value at vesting, Reg §1.83-7(a) provides that taxation doesn't occur until exercise or disposition of the option.

As we have discussed, some companies and executives over the years have even sought to apply Section 83 taxation at grant, thereby garnering capital gain treatment for stock price appreciation after the grant date. The IRS has consistently resisted these attempts on various grounds.

Google also points out that the new Section 409A final Regs confirm (see Section 1.409A-1(b)(5)(v)(B)) that adding transferability to an option should not be a “modification” (creating a discounted option/NQDC where the option is in-the-money), because discretion to add transferability had already been reserved (as Google believes its plan does—see below). Adding transferability to an ISO obviously would turn the option into an NQSO; all of Google’s post-IPO options are NQSOs.

*Section 162(m).* As for whether modification of an in-the-money option to add transferability in the auction program constitutes a new, discounted stock option grant for Section 162(m) purposes, possibly affecting the tax deductibility of top executives’ related stock option taxable compensation, Google isn’t concerned with that because they have excluded their entire executive group from the program. Companies desiring to (i) include in their TSO program executives who are subject to Section 162(m), or may become so prior to sale of an option, and (ii) modify their extant options, might take some comfort from PLR 9550124, which says that the amendment of options to allow gifts to family members isn’t deemed a new grant under §162(m). (See our January-February 1996 issue at pg 9.) But, seeking IRS guidance is advisable on this one.

### *Plan Compliance/Amendment/Shareholder Approval*

Adding the transferability of options to a stock plan would be a material amendment, requiring shareholder approval under SRO rules and, possibly, under the plan itself. However, well-drafted plans these days (e.g., Google’s) already allow options to be transferable, e.g., “to the extent allowed by the committee.” (See the May-June 1999 issue of *The Corporate Counsel* at pg 3.)

*Section 16 Reporting.* For those companies that may allow their insiders to participate, Alan Dye tells us that (i) Form 4 reporting of the grant of a transferable option is no different from reporting the grant of a typical non-transferable option; (ii) amendment to make an option trans-

ferable is not reportable (see Model Form 92 in Dye’s *Section 16 Forms and Filings Handbook* (2005)); (iii) selling an option should be reportable in the same manner as selling a traded call option (see Model Form 143; if the term of the sold option shortens, the option disposed of still is the option based on its original terms, and should be reported that way); and (iv) exercise of an option by an unaffiliated person after sale of the option by an insider is not reportable.

### *1933 Act Registration Requirements*

Google has had “extensive discussions” with the Staff regarding the registration requirements for all aspects of the program.

*Google’s Combo S-3.* On April 20, Google filed a Form S-3 that includes (i) its 2004 Stock Plan (which originally had been registered on Form S-8) and (ii) the TSO buyers’ anticipated hedging short sales (with a separate “Hedging Prospectus”). [Actually, Google’s filing is on Form S-3ASR that is effective automatically upon filing. Google is a “WKSI,” eligible to use S-3ASR (see the November-December 2004 issue of *The Corporate Counsel* at pg 5).]

SEC Form S-8, the traditional registration statement for employee stock options, isn’t available for (exercise of) options that have been transferred beyond “family members.” (See the March-April 1999 issue of *The Corporate Counsel* at pg 2.) But, the S-3 doesn’t even apply to exercises by TSO buyers, and S-8 would still have been available for exercise of TSOs by employees (and family members). It’s not clear why Google changed its stock plan registration to S-3. In the upcoming issue of *The Corporate Counsel*, we intend to explore S-8 vs. S-3 stock plan registration and to delve into other 1933 Act registration aspects of Google’s TSO program.

### *Does Modification of Existing TSOs Involve a Tender Offer?*

Google says it is “unilaterally” modifying all post-IPO options held by all eligible employees, even apparently those who haven’t yet “enrolled” in the program. Thus, Google apparently has concluded that (despite the enrollment aspect of the program) applying the TSO program to extant options doesn’t require (or involve) the consent of optionees, in that the program only adds features beneficial to the optionee (which the optionee is not even required to utilize); *i.e.*, enrollment is not consent but merely an election to participate in the program (and access bids

- 6 online). (As discussed above, the modification of NQSOs has no adverse, or other, income tax consequences that may trigger a need for consents.) Thus, Google apparently has concluded that the SEC's tender offer requirements (see the July-August 2001 issue of *The Corporate Counsel* at pg 2) aren't implicated.

### *TSO Sales Subject to Insider Trading Blackouts*

Even though the participating Google employees are not insiders, Google is not allowing TSO sales during any regular quarterly insider trading blackout period or during any other period when Google has determined that there is material non-public information relating to Google. Google says that the S-3 registering short sales may not be used while Google possesses material non-public information. It's not clear here whether they mean the S-3 can't legally be used, or whether they won't permit it to be used. As we have discussed, the ability to use an extant registration statement is not automatically affected by the existence of undisclosed material information. (See the March-April 2005 issue of *The Corporate Counsel* at pg 9.) But, Google and the short sellers obviously are concerned with potential disclosure liability for the registered, public short sales that would occur contemporaneous with any TSO sale. (Google is indemnifying the sellers from "underwriter" liabilities.)

Even 10b5-1 Plan Option Sales Blacked-Out. As our readers may recall, SEC Rule 10b5-1(c) insulates from anti-fraud liability transactions in company stock that are effected per a plan entered into at the time that the person is not aware of any material undisclosed information regarding the company. (See the September-October 2000 issue of *The Corporate Counsel*.) Most companies allow 10b5-1 plan sales of company stock during blackout periods (so long as the plan was entered into during a window period). But here, the real concern is the contemporaneous short sales triggered by TSO sales, which wouldn't be protected by a Rule 10b5-1 plan (more on this aspect also in the upcoming *The Corporate Counsel*). Thus, Google is not permitting TSO sales during any (quarterly or imposed) blackout period.

Interestingly, Google points out that a 10b5-1 plan for selling TSOs still might make sense, though sales will be suspended while non-public information is deemed to be extant, because option sales might end up being permitted by

Google at a time that a court, etc. ultimately determines that there was, in fact, material non-public information; so long as there was no material non-public information at the time the plan was entered into, the Rule 10b5-1(c) defense would be applicable in that situation. Keep in mind that 10b5-1 plans are available even to non-executives/insiders. (See our September-October 2005 issue at pg 9.) Google makes available to all its employees a model 10b5-1 plan, which it has now updated for the TSO program.

Exercising Instead During a Blackout. Google initially intended to add to its blackout policy even normal option exercises via same-day sales. (Ordinarily, resales of option stock incident to traditional option exercises (same-day sales, etc.) are not made pursuant to a registration statement, and companies don't generally black out option exercises.) Apparently, Google's rationale here was that, since Google had seen fit to impose a blackout on all option sales because of the mere existence of inside information, then employees shouldn't be doing the equivalent of exercising/selling either. Ultimately, Google decided to apply blackouts only to sales of TSOs (*i.e.*, where there will be short sales pursuant to an S-3). Of course, insiders (and others who actually possess material undisclosed information) are blacked out by Google as to any transactions in Google securities.

Now, where an employee desires to cash-in their option during a blackout period, the employee can decide to forgo the TSO premium and, instead, exercise normally (realizing only the spread). It should even be possible to build that alternative (*i.e.*, option exercise) into a 10b5-1 option sale plan, *i.e.*, where an unscheduled blackout is in effect on a scheduled TSO sale date (or where a blackout is imposed near the expiration date of an option).

The Problem of Having to Announce a Blackout. As we have discussed, a big concern with imposing a (non-quarterly) blackout on employees generally (vs. only on insiders, and only when an insider notifies the company of a proposed transaction) is that there is a need to communicate the blackout to employees generally, suggesting that something big may be in the works. (See the September-October 2001 issue of *The Corporate Counsel* at pg 2.) Google foresees and attempts to ameliorate this problem by providing/disclosing that an imposed TSO sale blackout may occur for a "variety of reasons,

including maintenance and other technical reasons.” Nevertheless, we suspect that any black-out not specifically identified as solely technical will be seen by the marketplace as that something is afoot. (Google also says that employees may not be provided advance notice of a black-out, implying they may be notified only when they seek to sell a TSO; thus, Google is saying it may even be able to avoid disclosure of an imposed blackout.)

*Other Thoughts*

Options Gifted to Family Members. Some stock option programs (but not Google’s, apparently) permit optionees to gift stock options to those “family members” who are eligible to exercise via Form S-8. Those donees might, in turn, be able to sell in the TSO auction.

Share Dilution. All sold TSOs that are in the 7 money at expiration will end up being exercised by the buyer (for cash), resulting in issuance of all shares subject to the option. But, at those companies where exercises generally are via same-day sale, that also results in issuance of the gross number of option shares. (Some companies might consider adding an SSAR feature to TSOs, or even granting TSSARs.)

While TSOs are outstanding, the EPS effect under FAS 128 would be no different for TSOs than for traditional employee stock options, except that after sale there would be no further assumed tax savings/share buyback that reduces the denominator (see our January-February 2006 issue at pg 4); pre-sale, the company presumably would assume tax savings based on the spread, not the bid price for an option.

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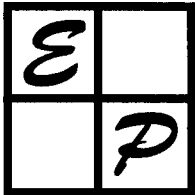
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## HIGHLIGHTS AND PITFALLS

### Deep (1933 Act) Thoughts on Google's TSO Program

Google's transferable employee stock option program (featured in the May-June 2007 issue of *The Corporate Executive*) is fertile with 1933 Act detours and forks in the road. For those who may have missed that discussion, Google is providing employees a program to sell their options to institutions via an online auction managed by Morgan Stanley. New grants will also be TSOs; executives and directors are not participating. The option buyers will hedge their position immediately by selling short an equal number of shares, then adjusting their position to a desired "delta."

#### *Registration of Short Sales, But Not the Exercise of Sold TSOs— The 2003 Goldman Sachs II Interpretive Letter*

The option buyers' short sales involve the public sale of shares that is equivalent to advance sale of the option shares that the option buyers ultimately will purchase from the company. Thus, Google has included those short sales in its S-3 (File No. 333-142243) that also includes its stock plan (replacing its S-8s, which Google de-registered and transferred the unused fees—see our January-February 2001 issue at pg 4).

In a letter issued to Goldman Sachs & Co. dated October 9, 2003 (see the January-February 2004 issue of *The Corporate Counsel* at pg 1), the Staff essentially memorialized the 1933 Act registration requirements of Microsoft's 2003 program (similar to Google's TSO program), where J.P. Morgan bought (underwater) Microsoft employee stock options and immediately hedged its position via short sales in the public market. The Staff had required Microsoft to register the short sales upfront (a Rule 415(a)(1)(x) shelf offering), treating the (public) buyers of the shares sold in the short sale as the "real purchasers," and concurred that the ultimate exercise of the sold options (by J.P. Morgan just prior to expiration of the options) needn't be registered. In essence, registration of the short sales rendered the ultimate exercise of the options (including delivery of the option shares to close out share borrowings) a 1933 Act non-event.

The Microsoft situation was a one-shot transaction so, there, the Staff's position freed the company from maintaining the registration (for three years until expiration when the options would be exercised) and, more importantly, freed Morgan from any concerns that a registration statement would still be in effect at the time of exercise. In the Google situation, because the auction program is ongoing, the S-3 covering short sales will need to be maintained in effect throughout the duration of the TSO program.

But, the Staff's position that registration is required upfront (at the time of the short sales), *not down the road at the time of exercise*, is still vital here, in that it wouldn't be acceptable to the option buyers in the Google program for there to be any uncertainty (or conditions, e.g., continuing S-3 registration) for the free tradability of the stock they acquire upon ultimate exercise of the options they purchase. So long as the S-3 is in effect when an option is purchased (and all the shares are sold short simultaneously), the option buyers are assured of liquidity for all of the option shares. In fact, Google's S-3 doesn't even cover exercise of the transferred TSOs.

Theoretically, a buyer might not wish to sell short 100% of the shares immediately. (Google points out that the TSO buyers might borrow shares from "securities lenders" in order to effect the short sales.) However, by selling short all shares immediately per the S-3 that is in effect at the time of their purchase of an option, they not only cleanse the option stock of 1933 Act restriction but they become free thereafter to subsequently buy back shares in the market (with proceeds from the short sales) in order to arrive at, and adjust up or down later, their net hedge position.

Traded Call, Etc. Options—No Issuer Registration. Normally, the exercise of options issued by a company must be registered (unless non-public or otherwise exempt), even where the original sale/issuance of the

options was registered, e.g., following the registered sale of common stock purchase warrants an S-3 must be maintained to cover exercises (per Rule 415(a)(1)(iii)). In this context, we got to thinking about how traded/standardized options (calls, puts, etc.) in a company's stock fit in here. Those options aren't issued by the company, but are packaged by the applicable stock exchange, and technically are "issued" by the Options Clearing Corporation. Thus, no *company* registration is implicated, for either the issuance or exercise of those options (see Rule 238, adopted in Rel. No. 33-8171 (December 23, 2002)); but, an options disclosure document is required to be filed with the Commission by the options market (OCC) and furnished to customers (see Rule 9b-1). Another way to look at it is that these options are just a vehicle for everyday trading in a company's stock (with leverage).

The Staff's Net Exercise Alternative Apparently Not Available (or Needed). We wonder whether Google, in its pre-filing conference, asked the Staff to concur that exercise of the purchased options also would not require registration if the options were subject to SAR-type net exercise, i.e., issuance on exercise of only the net number of shares representing the spread. Might the Staff's position that net exercise of investment warrants does not require registration (see our September-October 1998 issue at pg 5), i.e., because an investment is made (only) at the time of purchase of the warrants (and the exercise is exempt under Section 3(a)(9)), be applicable here? We assume the Staff was not willing to extend this position to the Google TSO context, because of the Staff's longstanding refusal to apply it in the employee stock option context, even though here there is an actual investment in a warrant-like security at the time a TSO is purchased.

### Primary vs Secondary S-3?

Google's S-3 Hedging Prospectus (there is also a Stock Plan Prospectus) says that the subject shares "may be offered and sold from time to time by Morgan Stanley," and the option buyers (Morgan Stanley, Citigroup, et al.) are named as underwriters. We would think, however, that Google is the real seller here in a "primary" offering (of the option stock); thus, there is no selling shareholder section with S-K 507 information. That Morgan Stanley rather than Google is stated to be selling isn't really dispositive, in that the S-3ASR obviously wasn't reviewed (although Microsoft's S-3, which contains similar language, likely was). [Compare *Goldman Sachs I* (see our January-February 2000 issue at pg 4), where affiliates sold forward-sale contracts on shares they already owned and the broker-counterparties hedged; there, Rule 144 was implicated, not 1933 Act registration, because the affiliates were the deemed public sellers.] S-3 is available to any listed company to register sales by a shareholder, but primary S-3 eligibility is required for an issuer shelf.

### Why Not Register the TSO Sales?

Google also has not registered the employees' TSO sales. Grant of the TSOs is registered, just as grants of *non-transferable* options typically are registered. [Non-transferable options might not be a security separate from the underlying stock, but grant of the option is nevertheless an offer of the underlying stock, requiring (unless exempt, e.g., §4(2)) registration under Section 5(c). We suspect the Staff's accommodating employee stock option positions (see the *Telephone Interpretations Manual* (July 1997), at G.61), i.e., that there is no "offer" pre-vesting and that late registration is tolerated until (just prior to) exercise (see our July-August 2005 issue at pg 1), wouldn't apply to *transferable* employee stock options, especially where (as here) the options can morph into warrants.]

The TSOs are being sold only to a few institutional investors; thus, Section 4(2) should be applicable (or "§4(1-1/2)", because these are resales by the employees—see our May-June 1981 issue at pg 7). (As discussed above, any look through to the resulting public short sales of Google stock that are triggered by the TSO sales is addressed by the S-3 registration.) And, the sold TSOs are not further transferable, so there is no liquidity/resale concern that registration of the TSO sales might assuage. Moreover, gratuitously registering every transaction in sight (e.g., the TSO sales and exercises) might increase exposure to the 1933 Act's non-scienter antifraud liabilities, e.g., Section 11 (§12(a)(2) is not limited to *registered* offerings).

Technically, there might be a private offering problem even with sale of the TSOs to only a few investors, arguing for registration of the option sales, in that (pending implementation of the Commission's May 23 general solicitation interpretation/proposals), there may be a theoretical general solicitation problem here, i.e., any institutional investor can seek to become a bidder. Fortunately, the SEC finally is putting this one to bed.

### Might Google's Short-Sale S-3 Be Usable During the Pendency of Undisclosed Information?

Google says it will suspend TSO sales at any time that material information is undisclosed, i.e., during any imposed (or even regular quarterly) blackout period. In Q&As for its beta TSO program (see FWP filed

February 22, 2007), Google says that its S-3 registering the short sales “may not” be used while material information regarding Google is undisclosed. We think what they mean is not that the registration statement/prospectus is inadequate for 1933 Act purposes (see our March-April 2005 issue at pg 9), but that Google deems it prudent not to allow the registration statement to be used, especially since Google is registering sales of the option stock, and is indemnifying the underwriters from 1933 Act liabilities. Note that we are not talking here about undisclosed information resulting from a 1934 Act filing delinquency, which subject we featured in our March-April 2007 issue.

Suspending All S-3s? The logical extension of Google’s approach here might be to suspend any ongoing S-3s (S-8s, too?) during any blackout period, *i.e.*, allowing S-3 sales (and even stock-option exercises) only during window periods. We don’t think most issuers would go that far. Moreover, suspending all S-3s during an imposed blackout would be walking right into the problem of the marketplace becoming aware that something is astir (which Google takes pains to address in the context of its blackout of TSO sales/short sales by the TSO buyers—see our *The Corporate Executive* discussion at pg 6).

Rule 10b5-1 Plans. As we discussed, Google (despite encouraging 10b5-1 plans for all employees) is not permitting any TSO sales during blackout periods, even where there is a 10b5-1 plan specifying TSO sale dates. While a plan may protect the optionee/seller, here, neither Google (as registrant for the triggered short sales) nor the short sellers/underwriters would be protected by a 10b5-1 plan, in that 10b5-1(c) provides a defense only to 10b-5 liability, not 1933 Act Sections 11, 12(a)(2) or 17(a).

Form S-8 vs. S-3ASR

We wonder whether Google switched its stock plan registration to S-3(ASR) (i) because of concern that the grant of options that, upon sale, automatically morph into warrants couldn’t be registered on S-8, or (ii) because there may actually be a benefit to using S-3ASR rather than S-8. More on this in our upcoming issue. [Even non-primary S-3 issuers can use S-3 to register the exercise of stock options (instead of S-8), *i.e.*, by employees pre-sale or by the option buyers post-sale (see S-3 General Instruction I.B.4(a)(3)); although, as discussed above, Google did not register exercise of the sold options.]

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The Publisher of *The Corporate Counsel*, **Jesse M. Brill**, is a member of the New York and California Bars and received his J.D. from Yale Law School. Mr. Brill, formerly an attorney with the Securities & Exchange Commission, is securities counsel for one of the largest brokerage firms in the nation, and Chair of the NASPP, [CompensationStandards.com](http://CompensationStandards.com) and [DealLawyers.com](http://DealLawyers.com). Mr. Brill has chaired and participated on numerous panels and seminars.  
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Prospectus for Participants in the 2004 Stock Plan  
April 20, 2007



**Shares of Class A Common Stock  
and  
Stock-based Awards  
under Google's 2004 Stock Plan**

This prospectus covers (1) the offer and sale by us of shares of our Class A common stock upon exercise, other than by participating financial institutions, of options currently outstanding under our 2004 Stock Plan to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google, (2) the grant by us of nonstatutory stock options to eligible employees, consultants, and directors of Google or any parent or subsidiary of Google, and (3) the offer and sale by us of shares of our Class A common stock in connection with the grant or exercise of incentive stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and other stock-based awards to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google under our 2004 Stock Plan. See "Appendix A – Frequently Asked Questions about the 2004 Stock Plan." This prospectus also covers such additional stock-based awards and shares of Class A common stock that may become available from time to time under our 2004 Stock Plan. We will receive the exercise or purchase price of certain stock-based awards under the 2004 Stock Plan if and when such awards are exercised or purchased. We will not receive any proceeds if the stock-based awards are exercised on a cashless basis.

We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to 10 votes per share and is convertible at any time into one share of Class A common stock.

Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol "GOOG." The closing price of our Class A common stock on April 19, 2007 was \$471.65 per share.

**Investing in our Class A common stock involves risks. See "Risk Factors" beginning on page 3 and in the documents we incorporate by reference in this prospectus.**

The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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Google is a global technology leader focused on improving the ways people connect with information. Our innovations in web search and advertising have made our web site a top internet destination and our brand one of the most recognized in the world. We maintain the largest, most comprehensive index of web sites and other content, and we make this information freely available to anyone with an internet connection. Our automated search technology helps people obtain nearly instant access to relevant information from our vast online index.

We generate revenue primarily by delivering relevant, cost-effective online advertising. Businesses use our AdWords program to promote their products and services with targeted advertising. In addition, the thousands of third-party web sites that comprise the Google Network use our AdSense program to deliver relevant ads that generate revenue and enhance the user experience.

Our mission is to organize the world's information and make it universally accessible and useful. We believe that the most effective, and ultimately the most profitable, way to accomplish our mission is to put the needs of our users first. We have found that offering a high-quality user experience leads to increased traffic and strong word-of-mouth promotion. Our dedication to putting users first is reflected in three key commitments:

- We will do our best to provide the most relevant and useful search results possible, independent of financial incentives. Our search results will be objective and we will not accept payment for inclusion or ranking in them.
- We will do our best to provide the most relevant and useful advertising. Advertisements should not be an annoying interruption. If any element on a search result page is influenced by payment to us, we will make it clear to our users.
- We will never stop working to improve our user experience, our search technology and other important areas of information organization.

We believe that our user focus is the foundation of our success to date. We also believe that this focus is critical for the creation of long-term value. We do not intend to compromise our user focus for short-term economic gain.

**Corporate Information**

We were incorporated in California in September 1998, and in August 2003, we reincorporated in Delaware. Our principal executive offices are located at 1600 Amphitheatre Parkway, Mountain View, California 94043, and our telephone number is (650) 253-0000. We maintain a number of web sites including [www.google.com](http://www.google.com). The information on our web sites is not part of this prospectus.

Google® is a registered trademark in the United States and several other countries. All other trademarks, trade names and service marks appearing in this prospectus are the property of their respective holders.

2004 Stock Plan Prospectus – 1

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**Table of Contents****The Offering**

This prospectus covers (1) the offer and sale by us of shares of our Class A common stock upon exercise, other than by participating financial institutions, of options currently outstanding under our 2004 Stock Plan to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google, (2) the grant by us of nonstatutory stock options to eligible employees, consultants and directors of Google or any parent or subsidiary of Google, and (3) the offer and sale by us of shares of Class A common stock in connection with the grant or exercise of incentive stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and other stock-based awards to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google under our 2004 Stock Plan. See “Appendix A – Frequently Asked Questions about the 2004 Stock Plan.” This prospectus also covers such additional stock-based awards and shares of Class A common stock that may become available from time to time under our 2004 Stock Plan.

2004 Stock Plan Prospectus – 2

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**Table of Contents****RISK FACTORS**

*Please carefully consider the risk factors described in our periodic reports filed with the Securities and Exchange Commission, which are incorporated by reference in this prospectus, as well as other information we include or incorporate by reference in this prospectus or include in any applicable prospectus supplement. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.*

**Risks Related to the Transferable Stock Option Program**

*The price you receive for selling your option in the TSO program may not reflect the value of your option.*

If you choose to sell your option in the Transferable Stock Option, or TSO, program, there can be no assurance that the price you receive from the participating financial institution reflects the value of your option. Options have both theoretical value, or “time value,” and “intrinsic value,” which is the difference between the exercise price and current market price for the Class A common stock. The price offered by participating financial institutions in the TSO program for options is expected to be based on the exercise price of the option, the current market price of our Class A common stock, the volatility of our Class A common stock, current interest rates, the term of the option, the cost of the hedging activities by the participating financial institutions and current market conditions. Several factors affect the difference between the price you receive in the TSO program and the value of your option, including:

- the amendments to the eligible options to include certain automatic adjustment provisions will result in a loss of the time value of your option;
- choosing to sell your option in the TSO program as opposed to exercising and selling the underlying shares at a later date may result in a loss of intrinsic value of your option if the market price of our common stock increases over time; and
- due to the limited number of participating financial institutions in the TSO program, and the limitations on resale and transaction costs of the participating financial institutions, the TSO program may not be as efficient as a public market.

*You may realize less value from selling your options under the TSO program than the theoretical value, or “time value,” of your option.*

If an option is exercised prior to its expiration date, the option holder gives up theoretical value, or “time value,” inherent in an option. In connection with the TSO program, we expect to unilaterally amend outstanding eligible options to include certain automatic adjustment provisions that will become effective only upon transfer of the option under the TSO program. In particular, for options with a remaining term greater than two years, the remaining term of the option will be automatically reduced to two years. If the remaining term of the option is less than two years, the remaining term of the option will be further reduced in six-month increments until the remaining transferable option term is six months. For example, an option with a 23-month term will be reduced to a term of 18 months. If the remaining term of an option is less than six months, the option is not eligible to be sold in the TSO program. These automatic adjustments result in the loss of time value, although in an amount less than would be lost if you exercise the options (except in the case of options with a remaining term of two years or less, which will be adjusted as described above). The time value of an option decreases as its term decreases, and the amount a participating institution will be willing to pay under the TSO program will reflect the effect of the automatic reduction in the remaining term of the option.

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***You may realize less value from selling your options under the TSO program than if you choose to exercise your options and sell the shares at a later date, and you may realize less value from exercising your options and immediately selling the shares than from selling your options under the TSO program.***

For any eligible option, you may choose to (i) hold the option, (ii) exercise the option (in whole or in part as it vests) and either hold or sell the stock or (iii) sell the option (in whole or in part as it vests) to a participating financial institution through the TSO program. A participating financial institution bidding on your option may be willing to pay a premium above the “intrinsic value” of your option, which is the difference between the exercise price and current market price for our Class A common stock. In this case, you would realize less value from exercising your options and immediately selling the shares than you would from selling your options under the TSO program. However, if you choose to exercise your option and then sell the shares at a later date, you would benefit from any increase in the market price of our Class A common stock that occurs after the exercise date, which may be greater than the premium the financial institution is willing to pay for purchasing your options in the TSO program, but you would also be at risk of a decrease in the market price of our Class A common stock. Furthermore, if you exercise your option and you sell your shares after satisfying the one-year holding period required for long-term capital gains treatment, your tax on such additional appreciation (along with the tax you pay at exercise) may be less than the ordinary income taxation applicable to sales of options in the TSO program. Thus, in such circumstances, you may realize more value than if you had previously chosen to sell your options in the TSO program. The tax consequences of the TSO program, which are described below in this prospectus for U.S. taxpayers only, should be considered when making your decision to participate in the TSO program.

***The difference between the market price and exercise price of your option will affect the amount the participating financial institutions are willing to pay for your option.***

As options become more in- or out-of-the-money — that is, as the market price of Google common stock gets further from the exercise price of the option — the time value of the option decreases. For in-the-money options, this means that the excess over the intrinsic value of the option that participating institutions are willing to pay will decrease. For out-of-the-money options, this means that the amount participating institutions are willing to pay will decrease.

***You should not rely on the value of publicly-traded options to value your option under the TSO program.***

We caution you not to place undue reliance on the value of publicly-traded options when attempting to determine the value of your options under the TSO program. The TSO program is not expected to be as efficient as the public market because of the limited number of participating financial institutions in the TSO program, the limitations on their ability to sell options they purchase under the TSO program and the shares they receive upon exercise of the options, the higher transaction costs they may incur in connection with their hedging transactions and the different terms governing the options in the TSO program as compared to publicly-traded options. In addition, the market price for options is highly volatile and may fluctuate dramatically, particularly when the option exercise price is at or near the market price for our Class A common stock. We make no representations as to what the “fair value” of your options under the TSO program should be.

***The current highest bid price quoted for your option may not be the actual price you receive upon sale.***

The price offered by participating financial institutions in the TSO program for options is expected to be based on the exercise price of the option, the current market price of our Class A common stock, the volatility of our Class A common stock, current interest rates, the term of the option, the cost of the hedging activities by the participating financial institutions and current market conditions. Options with the same exercise price will not necessarily receive bids for the same price on a particular trading day. In addition, a participating financial institution may place a limit on the number of shares underlying options it will purchase at the price offered. If you choose to participate in the TSO program, you will use a secure internal online tool to see the current highest bid price offered by the participating financial institutions for your options and to place sell orders. However, the current bid may change during the time that it takes for your sell order to be transmitted, or because the highest bid price was not available for the full size of your order.

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### ***The TSO program may not be available when you want to sell your options.***

The TSO program will be available during regular trading hours for the Nasdaq Stock Market only when our trading window is open. Generally, the trading window is open for approximately four to six weeks each quarter. However, on the last day of each of our trading windows, the TSO program will close one hour prior to the close of regular trading hours for the Nasdaq Stock Market. We will suspend the TSO program from time to time for a variety of reasons, including for maintenance and other technical reasons, and for periods when we believe we are in possession of material, non-public information until the information is no longer material or the second business day after the information has been made public. You will likely not be given advance notice of any suspension of the TSO program, and you will be unable to sell options under the TSO program, even under a Rule 10b5-1 trading plan, when the TSO program has been suspended or is not otherwise available.

### ***The TSO program may, but should not be, be affected by section 409A of the Internal Revenue Code and the resulting additional taxes under section 409A.***

Section 409A of the Internal Revenue Code generally subjects certain options to early income tax recognition (at the time of vesting) and the imposition of additional taxes and interest penalties, regardless of whether the option has been exercised or sold. Normal federal and state income taxes, an additional 20% federal penalty tax and additional state penalty tax (currently an additional 20% California tax would apply to California residents) and other interest penalties can apply. Section 409A generally applies only to discounted options (those issued with an exercise price below that equal to the fair market value of our stock on the date of grant) or any non-discounted stock option that is modified in a manner deemed impermissible pursuant to section 409A. We do not believe the TSO program will be affected by section 409A. With respect to options that we grant after the TSO program begins, there will be no section 409A tax so long as we grant the options at fair market value (which is what we currently do) and such options are not modified in the future in a manner deemed impermissible under section 409A. The same requirements exist with respect to options already outstanding at the time the TSO program begins. Additionally, in order for outstanding options not to be affected by section 409A, the addition to the outstanding options of the transferability feature required for the TSO program must not an impermissible modification under section 409A. The final regulations under section 409A specifically permits certain changes to be made to options without the options being deemed regrants for tax purposes. More specifically, the final regulations allow the addition of a transferability feature under certain circumstances where the discretion to add such transferability feature had been reserved. We believe that the outstanding options reserve discretion to add a transferability feature, since they incorporate the terms of the 2004 Stock Plan that specifically reserves such discretion. As a result, we believe that the outstanding options should not be deemed impermissibly modified pursuant to section 409A when the transferability feature is added for the TSO program.

### ***The market activities of participating financial institutions with respect to our Class A common stock may affect the market price and volatility of our Class A common stock.***

The financial institutions participating in the TSO program will enter into transactions to hedge their economic risk to changes in the price of our Class A common stock issuable under options purchased from Google employees in connection with the TSO program. These market transactions will include short sales of our Class A common stock equal to the aggregate number of shares underlying options purchased by a participating financial institution in the TSO program on a particular day. These market transactions may also include subsequent sales and purchases of our Class A common stock after the establishment of the initial hedge position by the participating financial institutions in amounts deemed by a participating financial institution to appropriately hedge its portfolio of options purchased under the TSO program and that will vary depending, among other things, upon the prevailing price of our Class A common stock. These sales could have the effect of decreasing the market price of our Class A common stock and the value of options purchased in the TSO program. Purchases to cover a short position may have the effect of preventing or slowing a decline in the market price of the Class A common stock, and may stabilize, maintain or otherwise affect the market price of the Class A common stock. These purchases could have the effect of increasing the market price of our Class A common stock above the price that otherwise might exist. Such sales and purchases, if commenced, could be discontinued at any time. Both sales and purchases may affect the volatility of our Class A common stock.

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**Table of Contents****FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated into this prospectus by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements include all statements other than statements of historical facts and current status contained or incorporated by reference in this prospectus, including statements regarding our future financial position, our business strategy, and the plans and objectives of management for future operations. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements involve risks, uncertainties and assumptions related to: significant competition from Microsoft and Yahoo; competition from other Internet companies, including web search providers, internet access providers, internet advertising companies and destination web sites that may also bundle their services with internet access; competition from traditional media companies, and our inclusion in the advertising budgets of large advertisers; expectations of our revenue growth rate to decline and anticipated downward pressure on our operating margin; fluctuations in our operating results; failure to innovate and provide products and services that are useful to users; and other risks, uncertainties and assumptions included in our periodic reports and in other documents that we file with the SEC.

In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. These statements are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements.

Although we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law, you are advised to consult any additional disclosures we make in our quarterly reports on Form 10-Q, annual report on Form 10-K and current reports on Form 8-K filed with the SEC. See “Where You Can Find Additional Information.” We provide a cautionary discussion of selected risks and uncertainties regarding an investment in our Class A common stock in our periodic reports and in other documents that we subsequently file with the SEC, and that we will describe in supplements to this prospectus.

**USE OF PROCEEDS**

We will receive the exercise or purchase price of certain stock-based awards under the 2004 Stock Plan if and when such awards are exercised or purchased. We will not receive any proceeds if the stock-based awards are exercised on a cashless basis. We currently have no specific plans for the use of the net proceeds received upon exercise or purchase of such awards. We anticipate that we will use the net proceeds received by us for general corporate purposes, including working capital.

**PLAN OF DISTRIBUTION**

The 2004 Stock Plan permits us to issue shares of our Class A common stock, or the cash equivalent thereof in the case of performance units and certain other stock-based awards, to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google. Shares are issuable by means of incentive stock options, nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and other stock-based awards. See “Appendix A – Frequently Asked Questions about the 2004 Stock Plan.”

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**Table of Contents****DESCRIPTION OF CAPITAL STOCK**

For a description of our Class A common stock, see the description contained in our Registration Statement on Form 10, as amended, which is incorporated herein by reference. For a description of the stock-based awards that will be issued pursuant to our 2004 Stock Plan, see “Appendix A – Frequently Asked Questions about the 2004 Stock Plan.”

**LEGAL MATTERS**

The validity of the nonstatutory stock options to be granted under our 2004 Stock Plan and the shares of Class A common stock issuable upon exercise of stock options or issuable pursuant to other stock-based awards granted under the 2004 Stock Plan will be passed upon for us by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California.

**EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedule included in our Annual Report on Form 10-K for the year ended December 31, 2006, and management’s assessment of the effectiveness of internal control over financial reporting as of December 31, 2006, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our consolidated financial statements and schedule are incorporated by reference in reliance on Ernst & Young LLP’s reports, given on their authority as experts in accounting and auditing.

**INFORMATION INCORPORATED BY REFERENCE**

The following documents previously filed with the SEC are hereby incorporated by reference in this Prospectus (other than filings or portions of filings that are furnished under applicable SEC rules rather than filed):

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2006, filed with the SEC on March 1, 2007;
- Our Current Report on Form 8-K filed with the SEC on February 2, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 5, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 16, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 28, 2007;
- Our Current Report on Form 8-K filed with the SEC on April 19, 2007 (relating to the announcement of the proposed DoubleClick acquisition);
- Item 8.01 of our Current Report on Form 8-K filed with the SEC on April 19, 2007; and

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- The description of our Class A common stock contained in Google's Registration Statement on Form 10 as filed with the SEC on April 29, 2004, as amended.

All reports and other documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of this offering shall be deemed to be incorporated by reference in this Prospectus and to be part hereof from the date of filing of such reports and other documents.

Google hereby undertakes to provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus is delivered, upon written or oral request of any such person, a copy of any and all of the information that has been or may be incorporated by reference in this Prospectus, other than exhibits to such documents. Requests for such copies should be directed to our Investor Relations department, at the following address:

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
(650) 253-0000

**WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We file annual, quarterly and special reports and other information with the SEC. You may read and copy documents we file at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains an internet web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the site is [www.sec.gov](http://www.sec.gov).

Our internet address is [www.google.com](http://www.google.com) and the investor relations section of our website is located at <http://investor.google.com>. We make available free of charge, on or through the investor relations section of our website, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

You should rely only on the information contained or incorporated by reference in this prospectus and in any accompanying prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus. The shares of Class A common stock offered under this prospectus are offered only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the Class A common stock.

This prospectus constitutes a part of a Registration Statement we filed with the SEC under the Securities Act. This prospectus does not contain all of the information set forth in the Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to Google and the shares of Class A common stock, reference is hereby made to the Registration Statement. The

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Registration Statement may be inspected at the public reference facilities maintained by the SEC at the addresses set forth in the preceding paragraph. Statements contained herein concerning any document filed as an exhibit are not necessarily complete, and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement. Each such statement is qualified in its entirety by such reference.

\* \* \* \* \*

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**APPENDIX A**



**Google Inc.**

**Frequently Asked Questions about the 2004 Stock Plan**

April 20, 2007

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### INTRODUCTION

The following questions and answers give a summary of the main features of the Google Inc. 2004 Stock Plan, referred to as the “**Plan**.” Please read this prospectus carefully. Google Inc. is referred to in this prospectus as “**Google**,” “**we**,” “**us**” and “**our**.”

#### 1. *What is the Plan?*

The Plan was originally adopted by our board of directors (the “**Board**”) on April 26, 2004 and approved by our stockholders on June 21, 2004. The Plan became effective on August 17, 2004. On April 5, 2005 the Board authorized an amendment and restatement to the Plan which included the addition of shares authorized under the Plan. On May 12, 2005, our stockholders adopted this amendment and restatement. On March 8, 2006, the Board authorized an amendment to the Plan to increase the number of shares authorized under the Plan. On May 11, 2006, our stockholders adopted this amendment. On January 30, 2007, the Board authorized an amendment to the Plan to increase the number of shares authorized under the Plan. The Plan permits us to issue shares of our Class A common stock (“**Shares**”) (or the cash equivalent thereof in the case of performance units and certain other stock-based awards) to eligible employees, consultants, and directors of Google or any parent or subsidiary of Google. Shares are issuable by means of incentive stock options, nonstatutory stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and other stock-based awards (collectively, “**Awards**”).

An individual who has received an Award under the Plan is referred to in this prospectus as a “**participant**.”

#### 2. *What is the purpose of the Plan?*

The Plan is intended to attract and retain the best available personnel for positions of substantial responsibility, provide additional incentive to eligible employees, consultants, and directors of Google or of any parent or subsidiary of Google, and to promote the success of Google.

#### 3. *How many Shares are available under the Plan?*

As of April 20, 2007, a total of 17,931,660 shares of our Class A common stock were reserved for issuance pursuant to the Plan.

The Shares may be authorized, but unissued, or reacquired Shares. If an Award expires or is terminated or canceled without having been exercised or settled in full, the terminated portion of such Award will again become available for future grant or sale under the Plan. Similarly, if an Award subject to forfeiture or repurchase is forfeited back to or repurchased by Google, the forfeited or repurchased Shares subject to the Award also become available for future grant or sale under the Plan. Shares are not deemed to be issued under the Plan with respect to any portion of an Award that is settled in cash. Upon payment in Shares pursuant to the exercise or purchase of an Award, the number of Shares available for issuance under the Plan is reduced only by the number of Shares actually issued in payment. If the exercise or purchase price of an Award is paid for through the tender of Shares, or withholding obligations are met through the tender or withholding of Shares, those Shares tendered or withheld will again be available for issuance under the Plan. However, Shares underlying options that have actually been transferred to a participating financial institution will not be returned to the Plan and will not be available for future distribution under the Plan.

If Google experiences a dividend or other distribution, recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Shares or other securities of the Company, or other similar change in its capital structure, such that the Administrator determines that an adjustment is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits to be made available under the Plan, then the Administrator shall make the following adjustments as it may deem equitable:

- adjustments to the number, class and price of Shares subject to outstanding Awards;
- adjustments to the number and class of Shares available for grant under the Plan; and

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- adjustments to the annual share issuance limits that the Plan is subject to in order to comply with Section 162(m) of the Internal Revenue Code, as amended (the “Code”).

Options that have been transferred to participating financial institutions in connection with the TSO program will contain antidilution provisions that become effective upon transfer.

### **4. *What should I know about this prospectus?***

This prospectus describes the main features of the Plan as of April 20, 2007. However, this prospectus does not contain all of the terms and conditions of the official Plan document. Accordingly, if there is any difference between the terms and conditions of the Plan as described in this prospectus and the provisions of the Plan document, the Plan document will govern.

### **5. *When will the Plan terminate?***

The Plan will terminate in April 2014, unless our Board terminates the Plan sooner.

## **ADMINISTRATION AND ELIGIBILITY**

### **6. *Who administers the Plan?***

Our Board, or one or more committees appointed by the Board, administers the Plan and controls its operation. The Plan may be administered by different committees with respect to different groups of participants. In each case, the Board or the committee administering the Plan is referred to as the “Administrator” (*not the same as our Stock Administration Department*). The Administrator has the authority to delegate to one or more individuals the day-to-day administration of the Plan and any of the functions assigned to it in this Plan. This delegation is subject to applicable laws and can be revoked at any time.

To the extent Awards are intended to qualify as performance-based compensation under Section 162(m) of the Code, the Plan will be administered by a committee of two or more “outside directors” within the meaning of Section 162(m), and to the extent transactions under the Plan are intended to qualify as exempt under Rule 16b-3 of the Securities Exchange Act of 1934, as amended (the “1934 Act”), the transactions will be structured to satisfy the requirements of exemption under Rule 16b-3.

The Administrator has the power to determine the terms, conditions and restrictions applicable to each Award. The Administrator may make whatever rules it considers appropriate for the administration and interpretation of the Plan. Among its powers, the Administrator may create other stock-based awards that are valued in whole or in part by reference to (or are otherwise based on) Shares or the cash equivalent thereof. In addition, the Administrator, in its discretion, may set restrictions based on the achievement of performance goals set on or before the latest date permissible to enable the options, restricted stock, restricted stock units, performance shares or performance units to qualify as “performance based compensation” under Section 162(m) of the Code. One or more of the following performance goals may apply: annual revenue, cash position, controllable profits, customer satisfaction, management by objectives, earnings per share, individual objectives, net income, new orders, operating cash flow, operating income, return on assets, return on equity, return on sales, and total shareholder return. The Administrator’s decisions are final and binding on all participants.

### **7. *Can the Plan be amended?***

Our Board may at any time amend, alter, suspend, or terminate the Plan, except that certain amendments may require stockholder approval or the consent of participants in the Plan.

### **8. *Who is eligible to participate in the Plan?***

Employees and consultants of Google or any parent or subsidiary of Google, are eligible to participate in the Plan. Our directors are also eligible to participate in the Plan.

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### **9. *Does participation in the Plan affect my service with Google or with any parent or subsidiary of Google?***

No, the grant of an Award under the Plan does not affect the terms and conditions of your service. Google, and any parent or subsidiary of Google, reserves the right to terminate your service at any time, with or without cause, subject to the provisions of local law. The grant of an Award under the Plan does not entitle you to any future award, compensation or severance pay.

## **STOCK OPTIONS — GENERAL**

### **10. *What is an option and how do I benefit from it?***

An option gives you the right to purchase a specified number of Shares for a fixed price, commonly referred to as the “exercise price,” during a prescribed period of time. If the value of the Shares increases above your exercise price during its term, you will be able to buy the Shares at a “discount.” If the value of the Shares does not increase above your exercise price, you may not recognize a benefit from the exercise of your option. However, you may be able to recognize a benefit from the sale of such option through the Transferable Stock Option program, which is described below beginning with Question 21.

The principal benefit of your option is the potential to profit from any increase in the value of the Shares during the period in which the option is exercisable, without risking any of your money until you exercise your option. Even if the value of the Shares decreases during the period in which the option is exercisable, the option may have value if sold under the TSO program.

### **11. *Are there different types of options?***

The Plan provides for the grant of (1) incentive stock options, which are entitled to favorable United States federal tax treatment, or (2) nonstatutory stock options, that is, options that are not incentive stock options.

Outside of the United States, options may be able to qualify for special tax treatment depending upon the tax laws of the particular jurisdiction in which you reside. In some jurisdictions, we may have implemented a sub-plan or adopted special rules so that options may qualify for special treatment in the particular jurisdiction. Therefore, it is important to review the particular provisions of the Plan, and if applicable, the sub-plan or rules that apply to your option. Please consult with your tax, legal and/or financial advisor with respect to your option.

### **12. *What special rules apply to incentive stock options?***

Incentive stock options are only granted to our employees or the employees of our affiliates. The exercise price must be at least 100% of the fair market value of our Shares at the date of grant. The term of any incentive stock option cannot exceed ten (10) years. In addition, any employee who is a 10% stockholder cannot receive an incentive stock option with an exercise price less than 110% of the fair market value on the date of grant and the term of such an option cannot exceed five (5) years.

In addition, the total fair market value of the Shares (as of the time of grant) with respect to which incentive stock options are exercisable for the first time by any participant during any calendar year (under all plans of Google and any of our parent or subsidiary companies) may not exceed \$100,000. Any Shares in excess of this limit will be treated as a nonstatutory option. If the employee holds more than one incentive stock option, the incentive stock options are considered in the order in which they were granted.

For purposes of the Plan, “**fair market value**” generally means the closing sales price for Shares on the relevant date, or if there were no sales reported on such date, the closing bid on the relevant date, as quoted on the Nasdaq Global Select Market, and as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable.

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**Table of Contents****13. *What is the exercise price of my option?***

The exercise price is the price at which you may purchase a Share by exercising an option. Subject to the limitations for incentive stock options (described in Question 12), the Administrator has discretion to determine the per Share exercise price of an option. However, the per Share exercise price for nonstatutory stock options intended to qualify as “performance-based compensation” within the meaning of Section 162(m) of the Code will be no less than 100% of the fair market value per Share on the date of such option grant.

**STOCK OPTIONS — TRADITIONAL EXERCISE METHODS****14. *When can I exercise my option?***

An option will become exercisable (that is, it will “vest”) at the time or times shown in your option agreement, assuming that you have satisfied any conditions to vesting (for example, continued employment or service with us).

**15. *How can I exercise my option?***

To exercise an option, we must receive your electronic (or written, in certain countries) notice of exercise in accordance with your option agreement, or you must follow the procedures that we may establish from time to time. With the exercise notice you also must send full payment of the exercise price and any applicable withholding taxes. Your ability to purchase Shares through the exercise of an option is conditioned upon compliance with any laws and Google policies that may apply to you. An option may not be exercised for a fraction of a Share.

**16. *How do I pay the exercise price?***

The Administrator determines how you may pay the exercise price of your option, and such determination is generally set forth in your option agreement.

The Plan provides that the method for paying the exercise price applicable to your option may, in the discretion of the Administrator, consist entirely of:

- cash,
- check,
- promissory note,
- certain other Shares,
- consideration received by Google under a cashless exercise program implemented by Google in connection with the Plan,
- a reduction in the amount of any liability Google may owe to you,
- any combination of the foregoing methods of payment, or
- such other consideration and methods of payment to the extent permitted by applicable laws.

Please check your option agreement to determine the forms of payment that are acceptable to pay the exercise price of your option, and which forms of payment require approval of the Administrator.

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### **17. *Will I have rights as a stockholder?***

Upon the exercise of your option, we will issue (or cause to be issued) to you a stock certificate in your name (or if requested by you, in the name of you and your spouse). Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on our books or a duly authorized transfer agent of Google), you will have no right to vote or receive dividends, or any other rights as a stockholder with respect to the exercised Shares, notwithstanding the exercise of your option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, unless otherwise provided for in the Plan (see Question 3).

### **18. *When does my option expire?***

The expiration date is the date on which your option expires and after which you no longer may exercise the option. The expiration dates for any particular option will be shown in your option agreement. The term of an incentive stock option will be subject to the limitations set out in Question 12. The options contain provisions that change the terms upon which an option expires upon transfer to a participating institution under the TSO program.

### **19. *Is there a limit on how many shares I can purchase through an option?***

No employee, consultant or director may receive an option to purchase more than 1,000,000 shares of our common stock in any fiscal year.

### **20. *What happens if I am terminated?***

If your service is terminated, you may exercise the vested portion of your option for the period of time stated in your option agreement. In the absence of any post-termination exercise periods specified in your option agreement, your vested options will remain exercisable for three months (or 12 months, in the case of death or disability), following your termination. The Administrator has the discretion to grant longer or shorter post-termination exercisability periods for your option as it deems appropriate. Therefore, it is important for you to read and understand your individual option agreement. If you do not exercise your option within the time specified in the option agreement, the option will terminate. In no event will your option remain exercisable beyond its original term. The options contain provisions that change the terms upon which an option expires upon transfer to a participating financial institution under the TSO program. You may not, however, participate in the TSO program once your employment is terminated, even if you may still exercise your option in a traditional manner.

## **STOCK OPTIONS — THE TSO PROGRAM**

### **21. *What are transferable stock options?***

Transferable stock options (“TSOs”) are employee nonstatutory stock options that, to the extent vested, may be transferred (“sold”) to participating financial institutions in an online auction as an alternative to exercising options in the traditional method and selling the underlying shares of Class A common stock.

### **22. *How do TSOs compare to traditional stock options?***

Traditional stock options are not transferable (except in limited circumstances). In order to recognize value from such traditional stock options, the option must be exercised and the underlying shares sold. TSOs can either be exercised like traditional options, or they can be sold under the TSO program. Eligible options are not transferable other than in connection with the TSO program.

### **23. *Which options are eligible?***

Only nonstatutory stock options granted since our initial public offering in August 2004 are eligible for the TSO program. No other types of Awards under the Plan are eligible for sale under the TSO program. Options must be vested and exercisable in order to be sold in the TSO program. Options assumed in connection with acquisitions are not eligible to be sold in the TSO program. In addition, if the remaining term of your option is less than six months, the option is not eligible to be sold in the TSO program.

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### **24. *Who can participate in the TSO program?***

Participation in the TSO program is voluntary. All employees who otherwise hold an eligible option, other than our Executive Management Group, may participate in the TSO program. Employees may decide to participate or not participate at any time. In addition, members of our Board of Directors and consultants may not participate in the TSO program.

We intend to make the TSO program available in all countries where we grant options except in countries where, due to local legal or tax implications, the TSO program would not benefit employees or would otherwise be impracticable.

### **25. *Can I sell some options and exercise others?***

Employees may exercise or sell options in any mix that they choose. For any eligible option, an employee may choose to hold the option, exercise the option and either hold or sell the stock in a traditional manner, or sell the option to a participating financial institution through the TSO program.

### **26. *Are there periods when I cannot sell options in the TSO program?***

The TSO program will be available during regular trading hours for the Nasdaq Stock Market only when our trading window is open. However, on the last day of each of our trading windows, the TSO program will close one hour prior to the close of regular trading hours for the Nasdaq Stock Market. In addition, we have the right to suspend the TSO program from time to time for any reason, including for maintenance and other technical reasons, and for periods when we believe that we are in possession of material, non-public information until the information is no longer material or the second business day after the information has been made public. See our insider trading policy for a description of our trading windows and for more information on what constitutes material, non-public information. You will likely not be given advance notice of any suspension of the TSO program. You will be unable to sell options under the TSO program, even under a Rule 10b5-1 trading plan, when the TSO program is suspended or not otherwise available. Because Google may suspend the TSO program for any reason, you should not infer anything about Google in the event we suspend the TSO program.

### **27. *Does the TSO program affect my ability to exercise options and sell shares in the traditional way?***

Not generally. However, consistent with our insider trading policy, we may from time to time prohibit Google employees from trading in Google securities if we determine that these individuals are in possession of material, non-public information. Although there is no policy that all Google employees will be prohibited from trading Google securities when the TSO program has been suspended, Google may impose blackouts on some or all Google employees in these cases. This restriction does not apply to sales of shares under a Rule 10b5-1 trading plan (but it does apply to sales of TSOs under a Rule 10b5-1 trading plan).

### **28. *What happens if I am terminated?***

You may not participate in the TSO program once your employment is terminated, even if your option is still exercisable. Former employees may only exercise options in the traditional manner.

### **29. *How does the TSO program work?***

Options will be sold under the TSO program through an auction process in which a designated broker dealer will serve as auction manager. Currently, we have selected Morgan Stanley & Co. Incorporated to act as the auction manager. The auction will be operated through a secure internal online tool (the “**TSO system**”), which is accessible by participating employees. All participating financial institutions must be able to provide automated bids for all options in the TSO program on a continuous basis, updated approximately every 30 seconds while the TSO market is open.

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Employees will use the TSO system to see the current highest bid price offered by the participating financial institutions for their vested options. During regular TSO market hours, the TSO system will continuously update to display the highest current bid price for each eligible option. All participating financial institutions will be required to bid on all of the options eligible for sale as a condition of participation in the TSO program, although the participating financial institutions may place zero dollar bids. A bid will be valid, at the time submitted by the participating financial institution, for at least 1,000 shares underlying options. A bid will remain in force until either the total available size of the bid is purchased at the bid price, a revised bid is submitted by the auction manager or a participating financial institution or if as a result of an employee order there are fewer than 1,000 shares underlying options available on the existing bid. Employees will receive the highest bid price at the time their market order is received, which may not be the same as the latest quote provided through the TSO system. No order may exceed 1,000 shares underlying options.

Appropriate withholding taxes will be deducted from each sale, and the sale price, net of any withholding, will be transferred to the employee's brokerage account.

### **30. *How can I cancel an order?***

Before an order is placed, the TSO system will ask you to confirm the order. Once you confirm your order, you can cancel it at any time prior to execution of the order by the auction manager. For a market order placed while the TSO program is active, there will likely be no opportunity to cancel the order after it has been placed because it will likely be executed immediately. For a market order placed while the TSO program is not active or a limit order, there may be an opportunity to cancel the order because it may not be executed immediately. Once the auction manager executes the order, you will be contractually bound to sell the option. You should be aware that the auction manager may cancel any bid after it has been matched to an order in the event the auction manager determines that an obvious error or disruption occurred in connection with the execution of such order at a clearly erroneous price.

### **31. *Do I have to open an additional brokerage account to participate in the TSO program?***

No. The TSO program uses the same Citigroup/Smith Barney account you already have for your existing Google stock options. To participate in the TSO program, you will create an online account in the TSO system, which provides another window into your existing Citigroup/Smith Barney account. You will not be required to open an additional brokerage account.

### **32. *What is the role of the auction manager?***

The auction manager will bid on options for its own account. In addition, the auction manager will act as an intermediary for the bids furnished by other participating financial institutions, and will receive and post the bids from other participating financial institutions. The bids from the other participating financial institutions will not be directly communicated to you by such participating financial institutions. At least two participating financial institutions must bid for a particular option in order for a bid to be communicated to you. The auction manager will communicate to you only the highest bid for each option that you wish to sell through the TSO system. If the auction manager's bid for the option is the highest bid, the auction manager will communicate the bid to you through the TSO system and purchase your option for its own account. If another participating financial institution has communicated to the auction manager a higher bid than the auction manager is prepared to make for its own account, then the auction manager will communicate the higher bid to you, purchase the option from you and separately sell the option to the participating financial institution that provided the higher bid.

### **33. *Can I specify in advance the price at which I want to sell my options?***

Yes. You may place either market orders or limit orders when selling your options. A market order is an order to sell automatically at whatever price is determined by the auction at the time the order is received. A limit order is an order to sell at a minimum price specified in advance by you, as long as one or more bidders is willing to pay that price. Limit orders may be set to expire at the end of a particular trading day or at the end of the current trading window. The sale of options subject to limit orders is not guaranteed if bids for such limit orders reach the limit price but the bids at that limit price expire before all limit orders at such limit price are filled. No order may exceed 1,000 shares underlying options.

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### **34. *How are bid prices for options determined?***

The price offered by participating financial institutions in the TSO program for options is expected to be based on the exercise price of the option, the current market price of our Class A common stock, the volatility of our Class A common stock, current interest rates, the term of the option, the cost of the hedging activities by the participating financial institutions and current market conditions. Options with the same exercise price will not necessarily receive bids for the same price on a particular trading day. In addition, a participating financial institution may place a limit on the number of shares underlying options it will purchase at the price offered.

### **35. *Can I sell vested “underwater” stock options in the TSO program?***

Yes. Financial institutions do place value on “underwater” stock options (*i.e.*, those with exercise prices above the current market price of our Class A common stock), and we expect them to bid on underwater options. However, if an option is significantly underwater and/or the option has only a limited remaining term (*e.g.*, if an option with a ten-year term is sold nine years and five months after grant), the bid price may be very low or even zero.

### **36. *Do the TSOs have any changes in their terms?***

In connection with the TSO program, we expect to unilaterally amend outstanding eligible options to include certain automatic adjustment provisions that will become effective only upon transfer of the option to the auction manager. When the options are sold to a bidder under the TSO program, four changes occur:

- For options with a remaining term greater than two years, the remaining term of the option will be automatically reduced to two years. If the remaining term of the option is less than two years, the remaining term of the option will be further reduced in six-month increments until the remaining transferable option term is zero. For example, an option with a 23-month term will be reduced to a term of 18 months. Therefore, if the remaining term is less than six months, the option is not eligible to be sold in the TSO program.
- The forfeiture provisions related to an employee’s employment at Google will be removed.
- The antidilution provisions of the option will be replaced with antidilution provisions customarily found in over-the-counter call options purchased and sold by securities dealers.
- The option will be converted into that number of warrants equal to the number of shares underlying the option to be transferred under the TSO program, with each warrant representing the right to buy one share of Class A common stock.

### **37. *What happens if I try to sell my option through the TSO program and separately try to exercise the option and sell the underlying shares?***

You may not sell an option through the TSO program and separately exercise the same option and sell the underlying shares. If you do so, the exercise of the option outside the TSO program and the sale of the underlying shares will be broken, and you will be responsible for all costs associated with the broken sale.

### **38. *How will Google account for options in the TSO program?***

Beginning January 1, 2006 (when the new stock-based compensation accounting rules became effective), we have recognized stock-based compensation for all new and unvested stock-based awards that are ultimately expected to vest as the requisite service is rendered (over the vesting period). The new accounting rules requires the use of a valuation model to calculate the fair value of stock-based awards for purposes of measuring the amount of stock-based compensation. We use the Black-Scholes-Merton valuation method.

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The TSO program does not change the way we will account for options, but it does increase the cost per option that we will recognize for accounting purposes because the fair value per option on the date of grant will be greater because the *expected* life of the option will be longer. The longer expected life results from the fact that upon transfer, the options are adjusted to have a two-year remaining life (generally) from the date of sale, whereas under the non-transferable option program options expire once they are exercised. Because we expect that options will be outstanding longer, they will have a greater fair value on the date of grant which will result in more stock-based compensation for accounting purposes. We intend to modify all existing stock options granted to employees (other than our Executive Management Group) after our initial public offering to permit their sale under the TSO program (after the Administrator acts to permit such sales). As a result of this modification and upon commencement of the TSO program, we will take a stock-based compensation charge, equal to the difference between the value of the modified stock options and their value immediately prior to modification, immediately for then-vested options and over the remaining vesting periods of up to four years for the unvested options.

Although we have no current intention of using the TSO program as a method for establishing a value for options for accounting purposes, the TSO program should provide observable market prices for transferred options, which may be relevant for this purpose.

## **RESTRICTED STOCK**

### **39. *What is restricted stock?***

Shares of restricted stock are Shares that are subject to restrictions that vest over time (that is, that become the nonforfeitable property of the participant) in accordance with terms and conditions that the Administrator establishes in its discretion. Upon vesting, you benefit by assuming full ownership of the Shares.

### **40. *How does restricted stock work?***

Subject to the terms of the Plan, the Administrator may grant Shares of restricted stock in amounts as the Administrator may determine in its sole discretion. Upon the grant of an Award of restricted stock, you will be given a written restricted stock agreement. This restricted stock agreement will specify the applicable vesting schedule and any other restrictions the Administrator deems advisable, the number of Shares granted, and such other terms and conditions as the Administrator will determine in its sole discretion.

Google generally will hold the Shares subject to the grant as escrow agent until vesting (or forfeiture, in the event that vesting does not occur). Unless the Administrator determines otherwise, Shares that do not vest typically will be subject to forfeiture upon your voluntary or involuntary termination of employment or service with Google for any reason (including death or permanent disability). The Committee may impose whatever conditions to vesting it determines to be appropriate. For example, the Committee may specify that vesting will occur based on continued employment, the achievement of target levels of performance or the occurrence of other events as determined by the Administrator.

### **41. *Is there a limit on how many shares of restricted stock I may receive?***

No employee, consultant or director may receive more than 500,000 shares of restricted stock in any fiscal year.

### **42. *Can I transfer or sell my restricted stock?***

Unless the Administrator provides otherwise, you may not sell, transfer, pledge, assign, or otherwise alienate or hypothecate your Shares of restricted stock until the Shares of restricted stock have vested.

### **43. *Do I have rights as a stockholder with respect to my restricted stock?***

Yes, you may exercise full voting rights and you will receive all dividends and other distributions paid with respect to your Shares of restricted stock. If any dividends or distributions are paid in Shares, the Shares will be subject to the same restrictions on transferability and forfeitability as the Shares of restricted stock with respect to which they were paid.

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**Table of Contents****STOCK APPRECIATION RIGHTS****44. *What is a stock appreciation right and how do I benefit from it?***

Stock appreciation rights are awards that grant you, upon exercise of the stock appreciation right, an amount equal to the product of (a) the difference between the fair market value of a Share on the date of exercise over the exercise price, *times* (b) the number of Shares with respect to which the stock appreciation right is exercised. Thus, a stock appreciation right will have value only if the Shares increase in value after the date of grant. Google may pay the proceeds from the exercise of stock appreciation rights in cash or Shares, as the Administrator determines in its discretion.

**45. *What are the terms of each stock appreciation right?***

If Google grants you a stock appreciation right, we will send you a stock appreciation right agreement between Google and yourself covering the stock appreciation right grant. This stock appreciation right agreement will specify the exercise price, the term of the stock appreciation right, any conditions to exercise, and all other terms and conditions as the Administrator may determine in its sole discretion.

**46. *Is there a limit on how many stock appreciation rights I may receive?***

No employee, consultant or director may receive more than 1,000,000 stock appreciation rights in any fiscal year.

**47. *When do my stock appreciation rights expire?***

A stock appreciation right will expire upon the date determined by the Administrator and set forth in the stock appreciation rights agreement, subject to earlier termination if your employment or service with Google or any parent or subsidiary of Google is terminated.

If your service is terminated, you may exercise the vested portion of your stock appreciation right for the period of time stated in your option agreement. In the absence of any post-termination exercise periods specified in your option agreement, your vested options will remain exercisable for three months or 12 months (in the case of death or disability), following your termination. The Administrator has the discretion to grant longer or shorter post-termination exercisability periods for your stock appreciation right as it deems appropriate. Therefore, it is important for you to read and understand your individual stock appreciation right agreement. If you do not exercise your stock appreciation right within the time specified in the stock appreciation right agreement, the stock appreciation right will terminate. In no event will your stock appreciation right remain exercisable beyond its original term.

**PERFORMANCE UNITS AND PERFORMANCE SHARES****48. *What are performance units and performance shares and how do I benefit from them?***

Performance units and performance shares are Awards that will result in your receiving cash and/or Shares, if the conditions that apply to the Award are satisfied. The conditions typically will be based principally or solely on the achievement of performance milestones, but may include a service-based component, upon which the granting or vesting of Award may be based.

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### **49. *How do performance units and performance shares work?***

If we grant you a performance unit or performance share, Google will send you a performance award agreement between Google and yourself. This performance award agreement will specify the performance period, and such other terms and conditions as the Administrator may determine in its sole discretion.

Each performance unit will have an initial value that is established by the Administrator on or before the date of grant. Each performance share will have an initial value equal to the fair market value of a Share on the date of grant.

The Administrator will determine the number or value of performance units or performance shares that will be paid out under your Award. The Administrator may set performance objectives based on the achievement of company-wide, divisional, or individual goals, applicable federal or state securities laws, or any other basis the Committee may determine in its discretion, including continuous status as an employee or director. The time period during which the performance objectives must be met is called the “**performance period.**”

### **50. *How are my earnings under a performance unit or performance share determined?***

After the applicable performance period has ended, you will be entitled to receive a payout of the number of performance units or performance shares earned by you, if any, over the performance period. The payments will be determined as a function of the extent to which the corresponding performance objectives have been achieved. After the grant of your performance unit or performance share, the Administrator, in its sole discretion, may reduce or waive any performance objectives.

### **51. *How will I receive my earnings under a performance unit or performance share?***

Payment of earned performance units or performance shares will be made as soon as practicable after the expiration of the applicable performance period. The Committee, in its sole discretion, may pay earned performance units or performance shares in the form of cash, in Shares (which have an aggregate fair market value equal to the value of the earned performance unit or performance share at the close of the applicable performance period), or in a combination of cash and Shares.

### **52. *Is there a limit on how many performance units or performance shares I may receive?***

No employee, consultant or director may receive more than 500,000 performance units or performance shares in any fiscal year.

## **RESTRICTED STOCK UNITS**

### **53. *What are restricted stock units?***

Restricted stock units are Awards of restricted stock, performance shares or performance units that are paid out in installments or on a deferred basis. The Administrator determines the terms and conditions of restricted stock units.

### **54. *Is there a limit on how many restricted stock units I may receive?***

No employee, consultant or director may receive more than 500,000 shares of restricted stock units in any fiscal year.

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### **OTHER STOCK AWARDS**

#### **55. *What are other stock-based awards?***

The Administrator has the authority under the Plan to create Awards in addition to those specifically described in the Plan. These Awards must be valued in whole or in part by reference to, or must otherwise be based on, the Shares or the cash equivalent thereof. The Administrator determines the terms and conditions any other stock-based awards, and such Awards may be granted alone, in addition to, or in tandem with, other Awards granted under the Plan and/or cash awards made outside of the Plan.

### **PROVISIONS APPLYING TO AWARDS**

#### **56. *How do I satisfy any tax withholding that may apply to my Award?***

As a condition to the issuance of any Shares or other consideration to pursuant to an Award under the Plan, the Administrator may require you to make adequate provision for any tax withholding obligations Google may have in connection with your Award. Until you pay the total amount of all taxes required to be withheld by either cash, check, or such other form as the Administrator may approve, we will not be required to issue any Shares or other consideration in connection with your Award.

If you sell options under the TSO program, appropriate withholding taxes will be deducted from each sale and the sale price, net of any withholding, will be transferred to the your brokerage account.

#### **57. *What happens to my Award if I go on a leave of absence?***

Unless the Administrator determines otherwise, the vesting of your Awards granted under the Plan will be suspended during any unpaid leave of absence and will resume on the date you return to work on a regular schedule as determined by Google and you will not receive vesting credit for the time vesting has been suspended during such leave of absence. Your status as an employee will not cease if you are on a leave of absence approved by Google, or if you transfer between locations of Google or between Google and any of its parent or subsidiary companies. For purposes of incentive stock options, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or by contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three months following the 91<sup>st</sup> day of such leave any incentive stock option held by the participant will cease to be treated as an incentive stock option and will be treated for tax purposes as a nonstatutory stock option.

#### **58. *Can I transfer my Award?***

Unless the Administrator provides otherwise or except for employee nonstatutory stock options eligible for sale under the TSO program described above, Awards granted under the Plan may generally not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent and distribution. An Award granted to you may be exercised during your lifetime only by you. If the Administrator makes an Award transferable, such Award will contain such additional terms and conditions as the Administrator deems appropriate.

#### **59. *What happens if Google is acquired?***

In the event of our merger with another corporation or a “change in control” occurs, each outstanding Award under the Plan will be assumed or an equivalent award substituted by the successor corporation (or any parent or subsidiary of the successor corporation).

“Change in control” can mean any of the following:

- the sale of substantially all of our assets;

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- if any person acquires 50% or more of our total voting power and within three years from the date of this acquisition, a merger or consolidation of Google with or into the person (or affiliate of the person) holding such ownership occurs;
- if we merge or consolidate with another corporation and our stockholders before the merger or consolidation do not continue to represent 50% or more of our total voting power after the transaction; or
- a change in our board composition over a two-year period so that fewer than a majority of the directors are incumbent directors.

Unless the Administrator decides otherwise, if a successor corporation refuses to assume or substitute for an outstanding option or stock appreciation right you will fully vest in and have the right to exercise your option or stock appreciation right as to all of the Shares underlying such Awards, including Shares as to which it would not otherwise be vested or exercisable. If an option or stock appreciation right becomes fully vested and exercisable in lieu of assumption or substitution, the Administrator will notify you in writing or electronically that such Award will be fully exercisable for a period of fifteen (15) days from the date of the notice, then terminate upon the expiration of such period. Unless the Administrator determined otherwise, any restricted stock, performance shares, performance units or deferred stock units not assumed or substituted for will be fully vested as to all of the Shares subject to the Award, including Shares which would not otherwise be vested.

In the event an outside director is terminated immediately prior to or following a change in control, other than pursuant to a voluntary resignation, the Awards he or she received under the Plan will fully vest and become immediately exercisable.

### **60. *What happens if Google is dissolved or liquidated?***

In the event of a proposed dissolution or liquidation of Google, the Administrator will notify each participant as soon as practicable prior to the effective date of such proposed transaction. To the extent it has not been previously exercised, an Award will terminate immediately prior to the consummation of such proposed action. The Administrator may, in its sole discretion, provide that an Award will fully vest and become exercisable (or restrictions will lapse) prior to termination.

## **TAX AND ERISA INFORMATION**

The following discussion is intended only as a summary of the general United States income tax laws that apply to Awards granted under the Plan and the sale of any Shares acquired through the Awards. However, the federal, state and local tax consequences to any particular taxpayer will depend upon his or her individual circumstances. Accordingly, we strongly advise you to seek the advice of a qualified tax adviser regarding your participation in the Plan. Also, if you are not a United States taxpayer, the taxing jurisdiction or jurisdictions which apply to you will determine the tax effect of your participation in the Plan.

The following discussion assumes that the per Share exercise price of an option is equal to the fair market value of a Share on the date of grant and less than the fair market value of a Share on the date of exercise. It also assumes that the option is exercised at the time it is vested (other than in connection with the TSO program).

### **61. *What are the tax effects of nonstatutory stock options and stock appreciation rights?***

If you are granted a nonstatutory stock option or a stock appreciation right, you are not required to include any amount towards your income at the time of grant. However, when you exercise the nonstatutory stock option or stock appreciation right, you will have ordinary income to the extent the value of the Shares (and any cash) you receive on the date of exercise is greater than the exercise price you pay. If you exercise a nonstatutory stock option through payment of the exercise price in Shares, or in a combination of Shares and cash, you will have ordinary income upon exercise to the extent that the value (on the date of exercise) of the Shares you purchase is greater than the value of the Shares you surrender, less the amount of any cash paid upon exercise.

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Any gain or loss you recognize upon the sale or exchange of Shares that you acquire generally will be treated as capital gain or loss and will be long-term or short-term depending on whether you held the Shares for more than one (1) year. The holding period for the Shares will begin just after the time you recognize income. The amount of such gain or loss will be the difference between:

- the amount you realize upon the sale or exchange of the Shares, and
- the value of the Shares at the time you recognize ordinary income.

### ***62. What are the tax effects of incentive stock options?***

Incentive stock options are intended to qualify for the special tax treatment available under Section 422 of the Code. You generally will not recognize income as a result of the grant or exercise of incentive stock options.

Any gain generally will be taxed at long-term capital gain rates if you sell Shares that you purchased through the exercise of an incentive stock option:

- more than two years after the date of grant of the incentive stock option, and
- more than one year after the date of exercise of the incentive stock option.

However, if you sell Shares purchased through the exercise of an incentive stock option within either of the two holding periods described above, generally any gain up to the excess of the fair market value of the Shares on the date of exercise over the exercise price will be treated as ordinary income. Any additional gain generally will be taxable as long-term or short-term capital gain, depending on whether you have held the Shares for more than one year.

If you sell or otherwise transfer Shares that you purchased through the exercise of an incentive stock option within either of the above holding periods in a transaction in which you would not recognize a loss (if sustained) (for example, a gift), the excess of the value of the Shares on the exercise date over the exercise price will be treated as ordinary income.

Any loss that you recognize upon disposition of Shares purchased through the exercise of an incentive stock option, whether before or after expiration of the two-year and one-year holding periods, will be treated as a capital loss. Such loss will be long-term or short-term depending on whether you have held the Shares for more than one year.

### ***63. What about incentive stock options and the alternative minimum tax?***

If you are subject to the alternative minimum tax, the rules that apply to incentive stock options described above do not apply. Instead, alternative minimum taxable income generally is computed under the rules that apply to nonstatutory stock options. Accordingly, if you hold incentive stock options and are subject to the alternative minimum tax, you should be sure to consult your tax adviser before exercising any incentive stock options.

### ***64. What if I sell my options under the TSO program?***

In the United States, when you sell options under the TSO program, the amount you receive will be treated as compensation income to you in the year that you sell the option. This income is of the same character as the income you would have received if you had exercised your nonstatutory options and immediately sold the underlying shares (rather than sold your options through the TSO program). We will withhold the same type of taxes on the compensation income you earn from the sale of the options under the TSO program as we would have if you had exercised your nonstatutory options and immediately sold the underlying shares.

Since the TSO program is a new concept, the tax implications associated with this new program in other countries are not entirely certain. We are working with outside tax counsel to identify the tax implications in every

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country where we currently grant options to employees; and in the countries where we do offer participation in the TSO program, we generally believe that the tax consequences will be similar to the tax consequences of exercising ordinary options. However, this is subject to additional regulatory review.

### **65. *What are the tax effects of restricted stock?***

Unless you make an election under Section 83(b) of the Code, you will not have taxable income at the time you receive a restricted stock Award under the Plan. Instead, you will have ordinary income when (and if) the Shares vest and no longer can be forfeited. If you make a Section 83(b) election, you will recognize ordinary income at the time Google grants the Shares of restricted stock. However, if you later forfeit the Shares, no tax deduction is allowed with respect to the forfeiture. In all cases, the amount of ordinary income that you recognize will equal:

- the fair market value of the Shares at the time you recognize income, less
- the amount (if any) you pay for the Shares.

### **66. *What are the tax effects of a performance share or performance unit?***

If you receive a performance unit or a performance share under the Plan, you will not have taxable income at the time of grant. Instead, you generally will have ordinary income when Google delivers or pays the Shares or cash to you under the terms of the performance award agreement. The amount of ordinary income will equal the fair market value on the payment date of the Shares and/or cash you receive.

Any gain or loss you recognize upon the sale or exchange of Shares that you acquire through a grant of performance units or performance shares generally will be treated as capital gain or loss and will be long-term or short-term depending term depending on whether you have held the Shares for more than one year.

### **67. *What are the tax effects of a restricted stock unit?***

If you receive a restricted stock unit under the Plan, you will not have taxable income at the time of grant. Instead, you generally will be subject to employment tax withholding at the time the Award vests and you generally will have ordinary income when Google delivers Shares or pays cash to you under the terms of the restricted stock unit agreement. The amount of ordinary income will equal the fair market value on the payment date of the Shares and/or cash you receive.

Any gain or loss you recognize upon the subsequent sale or exchange of Shares that you acquire through a grant of restricted stock units generally will be treated as capital gain or loss and will be long-term or short-term depending on whether you have held the Shares for more than one year.

### **68. *What are the tax effects for Google?***

We generally will receive a deduction for United States federal income tax purposes in connection with an Award equal to the ordinary income you realize. We will be entitled to our deduction at the time that you recognize the ordinary income.

### **69. *Is the Plan subject to ERISA?***

The Plan is not subject to any of the provisions of the Employee Retirement Income Security Act of 1974 (“**ERISA**”).

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### **ADDITIONAL INFORMATION ABOUT THE PLAN AND PROSPECTUS**

#### **70. *Does the Plan limit a participant's ability to resell Shares acquired under the Plan?***

The Plan generally places no limitations upon a participant's ability to sell Shares acquired under the Plan. We will not receive any part of the proceeds of any such sales.

Our policy against insider trading applies to all of our employees, directors, and consultants and our affiliates. The policy against insider trading prohibits a participant from buying or selling Shares when he or she has "inside information." Inside information is material information about us that is not yet public but that a reasonable investor would consider important in deciding whether to buy or sell Shares. See our policy against insider trading for additional information. The TSO program may also affect your ability to exercise options and sell shares in a traditional manner (see Question 27).

A participant who is an "affiliate" of ours (within the meaning of Rule 405 under the 1933 Act), may not resell under this prospectus any Shares he or she purchases or receives under the Plan. Our executive officers and members of our Board are considered to be "affiliates" for this purpose. Any such re-sales must be either described in a separate prospectus, or, in certain instances, registered in a separate registration statement, or sold in accordance with the requirements of Rule 144 under the 1933 Act or another exemption available under the 1933 Act.

Also, section 16(b) of the 1934 Act permits us to recover any profit realized by certain of our officers, directors, and principal stockholders through the sale and purchase, or purchase and sale (as defined), of our Shares within any period of less than six (6) months.

#### **71. *What other conditions are associated with the exercise, issuance and delivery of my Shares?***

Shares will not be issued with respect to an Award unless the exercise of such Award and the issuance and delivery of Shares pursuant to the Award complies with all applicable provisions of law and will be further subject to the approval of our counsel with respect to such compliance.

As a condition to the exercise of an Award, we may require the person exercising such Award to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of our counsel, such a representation is required by any of the aforementioned applicable provisions of law.

Our inability to obtain authority from any regulatory body having jurisdiction, which authority is deemed by our counsel to be necessary to the lawful issuance and sale of any Shares hereunder, will relieve us of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority will not have been obtained.

#### **72. *What if I need more information?***

We will provide you free of charge with a copy of any or all of the documents incorporated by reference in this prospectus and in the registration statement on Form S-3 filed with the SEC relating to the Plan (except for any exhibits to these documents), including our annual report, and copies of other reports, proxy statements and communications distributed to our stockholders. You should direct your requests to our Stock Administration team at the following email address, location and/or phone number:

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
(650) 253-0000

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**Table of Contents****73. *What else should I know about this prospectus?***

We may update this prospectus in the future by furnishing to participants a new prospectus or a supplement containing updated information. You should rely only on the information incorporated by reference or provided in this prospectus or any new updated prospectus. We have not authorized anyone to provide you with different or additional information. We are not making an offer to sell any stock in any state or country where the offer is not permitted. You should not assume that the information in this prospectus or in any updated prospectus or supplement is accurate as of any date other than the date on the front of that prospectus or supplement.

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[Prospectus Cover Page for Morgan Stanley & Co. Incorporated]

PROSPECTUS

**CLASS A COMMON STOCK**

*This prospectus covers sales of up to 14,027,515 shares of our Class A common stock that may be offered and sold from time to time by Morgan Stanley & Co. Incorporated in connection with the Transferable Stock Option program established by us and described in this prospectus under the headings "Background and Purpose of the Sales Covered by this Prospectus and Related Transactions" and "Plan of Distribution." These sales will be short sales, which are sales of shares of Class A common stock borrowed by Morgan Stanley & Co. Incorporated from third parties. We will not receive any of the proceeds from the sale of the Class A common stock. See "Use of Proceeds."*

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*The shares of Class A common stock may be offered from time to time for sale in transactions, including block sales, in the over-the-counter market, in negotiated transactions or otherwise. The shares of Class A common stock will be sold at market prices prevailing at the time of sale or at prices otherwise negotiated. Morgan Stanley & Co. Incorporated is an underwriter with respect to the shares of Class A common stock sold by it under this prospectus. The difference, if any, between the proceeds received by Morgan Stanley & Co. Incorporated in establishing its initial hedge position with respect to an option and the price at which Morgan Stanley & Co. Incorporated purchased such option under the Transferable Stock Option program may be deemed underwriter's compensation.*

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*We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible at any time into one share of Class A common stock.*

*Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol "GOOG." The closing price of our Class A common stock on April 19, 2007 was \$471.65 per share.*

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*Investing in our Class A common stock involves risks. See "Risk Factors" beginning on page 2 and in the documents we incorporate by reference in this prospectus.*

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*The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.*

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**MORGAN STANLEY**

April 20, 2007

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[Prospectus Cover Page for Citigroup]

**PROSPECTUS****CLASS A COMMON STOCK**

*This prospectus covers sales of up to 14,027,515 shares of our Class A common stock that may be offered and sold from time to time by Morgan Stanley & Co. Incorporated in connection with the Transferable Stock Option program established by us and described in this prospectus under the headings “Background and Purpose of the Sales Covered by this Prospectus and Related Transactions” and “Plan of Distribution.” These sales will be short sales, which are sales of shares of Class A common stock borrowed by Citigroup Global Markets Inc. from third parties. We will not receive any of the proceeds from the sale of the Class A common stock. See “Use of Proceeds.”*

*The shares of Class A common stock may be offered from time to time for sale in transactions, including block sales, in the over-the-counter market, in negotiated transactions or otherwise. The shares of Class A common stock will be sold at market prices prevailing at the time of sale or at prices otherwise negotiated. Citigroup Global Markets Inc. is an underwriter with respect to the shares of Class A common stock sold by it under this prospectus. The difference, if any, between the proceeds received by Citigroup Global Markets Inc. in establishing its initial hedge position with respect to an option and the price at which Citigroup Global Markets Inc. purchased such option under the Transferable Stock Option program may be deemed underwriter’s compensation.*

*We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible at any time into one share of Class A common stock.*

*Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol “GOOG.” The closing price of our Class A common stock on April 19, 2007 was \$471.65 per share.*

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***Investing in our Class A common stock involves risks. See “Risk Factors” beginning on page 2 and in the documents we incorporate by reference in this prospectus.***

The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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**CITIGROUP**

April 20, 2007

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[Prospectus Cover Page for Credit Suisse]

**PROSPECTUS****CLASS A COMMON STOCK**

This prospectus covers sales of up to 14,027,515 shares of our Class A common stock that may be offered and sold from time to time by Morgan Stanley & Co. Incorporated in connection with the Transferable Stock Option program established by us and described in this prospectus under the headings "Background and Purpose of the Sales Covered by this Prospectus and Related Transactions" and "Plan of Distribution." These sales will be short sales, which are sales of shares of Class A common stock borrowed by Credit Suisse Securities (USA) LLC from third parties. We will not receive any of the proceeds from the sale of the Class A common stock. See "Use of Proceeds."

The shares of Class A common stock may be offered from time to time for sale in transactions, including block sales, in the over-the-counter market, in negotiated transactions or otherwise. The shares of Class A common stock will be sold at market prices prevailing at the time of sale or at prices otherwise negotiated. Credit Suisse Securities (USA) LLC is an underwriter with respect to the shares of Class A common stock sold by it under this prospectus. The difference, if any, between the proceeds received by Credit Suisse Securities (USA) LLC in establishing its initial hedge position with respect to an option and the price at which Credit Suisse Securities (USA) LLC purchased such option under the Transferable Stock Option program may be deemed underwriter's compensation.

We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible at any time into one share of Class A common stock.

Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol "GOOG." The closing price of our Class A common stock on April 19, 2007 was \$471.65 per share.

Investing in our Class A common stock involves risks. See "Risk Factors" beginning on page 2 and in the documents we incorporate by reference in this prospectus.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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**CREDIT SUISSE**

April 20, 2007

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[Prospectus Cover Page for UBS Investment Bank]

PROSPECTUS

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**CLASS A COMMON STOCK**

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This prospectus covers sales of up to 14,027,515 shares of our Class A common stock that may be offered and sold from time to time by Morgan Stanley & Co. Incorporated in connection with the Transferable Stock Option program established by us and described in this prospectus under the headings “Background and Purpose of the Sales Covered by this Prospectus and Related Transactions” and “Plan of Distribution.” These sales will be short sales, which are sales of shares of Class A common stock borrowed by UBS Securities LLC from third parties. We will not receive any of the proceeds from the sale of the Class A common stock. See “Use of Proceeds.”

The shares of Class A common stock may be offered from time to time for sale in transactions, including block sales, in the over-the-counter market, in negotiated transactions or otherwise. The shares of Class A common stock will be sold at market prices prevailing at the time of sale or at prices otherwise negotiated. UBS Securities LLC is an underwriter with respect to the shares of Class A common stock sold by it under this prospectus. The difference, if any, between the proceeds received by UBS Securities LLC in establishing its initial hedge position with respect to an option and the price at which UBS Securities LLC purchased such option under the Transferable Stock Option program may be deemed underwriter’s compensation.

We have two classes of authorized common stock, Class A common stock and Class B common stock. The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to ten votes per share and is convertible at any time into one share of Class A common stock.

Our Class A common stock is listed on the Nasdaq Global Select Market under the symbol “GOOG.” The closing price of our Class A common stock on April 19, 2007 was \$471.65 per share.

**Investing in our Class A common stock involves risks. See “Risk Factors” beginning on page 2 and in the documents we incorporate by reference in this prospectus.**

The Securities and Exchange Commission and state securities regulators have not approved or disapproved of these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

## **UBS Investment Bank**

April 20, 2007

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You should rely only on the information contained in or incorporated by reference into this prospectus or any free writing prospectus authorized by Google and delivered in connection with this offering. We have not, and the participating financial institution has not, authorized any other person to provide you with information different from that contained in this prospectus or any free writing prospectus authorized by Google. The participating financial institution is offering to sell, and seeking offers to buy, shares of our Class A common stock only in jurisdictions where offers and sales are permitted.

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**Table of Contents****PROSPECTUS SUMMARY****The Company**

Google is a global technology leader focused on improving the ways people connect with information. Our innovations in web search and advertising have made our web site a top internet destination and our brand one of the most recognized in the world. We maintain the largest, most comprehensive index of web sites and other content, and we make this information freely available to anyone with an internet connection. Our automated search technology helps people obtain nearly instant access to relevant information from our vast online index.

We generate revenue primarily by delivering relevant, cost-effective online advertising. Businesses use our AdWords program to promote their products and services with targeted advertising. In addition, the thousands of third-party web sites that comprise the Google Network use our AdSense program to deliver relevant ads that generate revenue and enhance the user experience.

Our mission is to organize the world's information and make it universally accessible and useful. We believe that the most effective, and ultimately the most profitable, way to accomplish our mission is to put the needs of our users first. We have found that offering a high-quality user experience leads to increased traffic and strong word-of-mouth promotion. Our dedication to putting users first is reflected in three key commitments:

- We will do our best to provide the most relevant and useful search results possible, independent of financial incentives. Our search results will be objective and we will not accept payment for inclusion or ranking in them.
- We will do our best to provide the most relevant and useful advertising. Advertisements should not be an annoying interruption. If any element on a search result page is influenced by payment to us, we will make it clear to our users.
- We will never stop working to improve our user experience, our search technology and other important areas of information organization.

We believe that our user focus is the foundation of our success to date. We also believe that this focus is critical for the creation of long-term value. We do not intend to compromise our user focus for short-term economic gain.

We were incorporated in California in September 1998, and in August 2003, we reincorporated in Delaware. Our principal executive offices are located at 1600 Amphitheatre Parkway, Mountain View, California 94043, and our telephone number is (650) 253-0000. We maintain a number of web sites including [www.google.com](http://www.google.com). The information on our web sites is not part of this prospectus.

Google® is a registered trademark in the United States and several other countries. All other trademarks, trade names and service marks appearing in this prospectus are the property of their respective holders.

**The Offering**

This prospectus covers sales of up to 14,027,515 shares of our Class A common stock that may be offered and sold from time to time by the participating financial institution named on the cover of this prospectus in connection with the Transferable Stock Option program established by us and described in this prospectus under the headings "Background and Purpose of the Sales Covered by this Prospectus and Related Transactions" and "Plan of Distribution." These sales will be short sales, which are sales of shares borrowed by the participating financial institution from third parties. We will not receive any of the proceeds from the sale of the Class A common stock.

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**Table of Contents****RISK FACTORS**

Please carefully consider the risk factors described in our periodic reports filed with the Securities and Exchange Commission, which are incorporated by reference in this prospectus, as well as other information we include or incorporate by reference in this prospectus or include in any applicable prospectus supplement. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business operations.

**Risks Related to the Transferable Stock Option Program**

*The market activities of participating financial institutions with respect to our Class A common stock may affect the market price and volatility of our Class A common stock.*

The financial institutions participating in the Transferable Stock Option, or TSO, program will enter into transactions to hedge their economic risk to changes in the price of our Class A common stock issuable under options purchased from Google employees in connection with the TSO program. These market transactions will include short sales of our Class A common stock equal to the aggregate number of shares underlying options purchased by a participating financial institution in the TSO program on a particular day. These market transactions, that are not covered by this prospectus, may also include subsequent sales and purchases of our Class A common stock after the establishment of the initial hedge position by the participating financial institutions in amounts deemed by a participating financial institution to appropriately hedge its portfolio of options purchased under the TSO program and that will vary depending, among other things, upon the prevailing price of our Class A common stock. These sales could have the effect of decreasing the market price of our Class A common stock and the value of options purchased in the TSO program. Purchases to cover a short position may have the effect of preventing or slowing a decline in the market price of the Class A common stock, and may stabilize, maintain or otherwise affect the market price of the Class A common stock. These purchases could have the effect of increasing the market price of our Class A common stock above the price that otherwise might exist. Such sales and purchases, if commenced, could be discontinued at any time. Both sales and purchases may affect the volatility of our Class A common stock.

**FORWARD-LOOKING STATEMENTS**

This prospectus, including the documents incorporated into this prospectus by reference, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These forward-looking statements include all statements other than statements of historical facts and current status contained or incorporated by reference in this prospectus, including statements regarding our future financial position, our business strategy, and the plans and objectives of management for future operations. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “expect” and similar expressions are intended to identify forward-looking statements.

We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy, short-term and long-term business operations and objectives, and financial needs. These forward-looking statements involve risks, uncertainties and assumptions related to: significant competition from Microsoft and Yahoo; competition from other internet companies, including web search providers, internet access providers, internet advertising companies and destination web sites that may also bundle their services with internet access; competition from traditional media companies, and our inclusion in the advertising budgets of large advertisers; expectations of our revenue growth rate to decline and anticipated downward pressure on our operating margin; fluctuations in our operating results; failure to innovate and provide products and services that are useful to users; and other risks, uncertainties and assumptions included in our periodic reports and in other documents that we file with the SEC.

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In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this prospectus may not occur and actual results could differ materially and adversely from those anticipated or implied in the forward-looking statements. These statements are based on information available to us on the date hereof, and we assume no obligation to update any such forward-looking statements.

Although we undertake no obligation to revise or update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law, you are advised to consult any additional disclosures we make in our quarterly reports on Form 10-Q, annual report on Form 10-K and current reports on Form 8-K filed with the SEC. See “Where You Can Find Additional Information.” We provide a cautionary discussion of selected risks and uncertainties regarding an investment in our Class A common stock in our periodic reports and in other documents that we subsequently file with the SEC, and that we will describe in supplements to this prospectus.

## **BACKGROUND AND PURPOSE OF THE SALES COVERED BY THIS PROSPECTUS AND RELATED TRANSACTIONS**

### **Description of the Transferable Stock Option Program**

Under the TSO program, our employees will be able to sell their vested stock options to participating financial institutions in an online auction as an alternative to exercising options in the traditional method and selling the underlying shares of Class A common stock. By enabling our employees to sell vested options, employees may realize additional value for their options beyond the intrinsic value of the option, which is the difference between the current market price and the exercise price. Certain financial institutions, including the financial institution named on the cover of this prospectus, which we refer to as participating financial institutions, will bid for the options in the online auction, and employees will be able to sell their options only to the participating financial institutions. The financial institutions participating in our TSO program are chosen at our sole discretion.

#### *The Auction Process*

Options will be sold under the TSO program through an auction process in which a designated broker dealer will serve as auction manager. Currently, we have selected Morgan Stanley & Co. Incorporated to act as the auction manager. The auction will be operated on a continuous quote model through a secure internal online tool, the TSO system, which is accessible by participating employees.

The auction manager will bid on options for its own account. In addition, the auction manager will act as an intermediary for the bids furnished by other participating financial institutions, and will receive and post the bids from other participating financial institutions. The bids from the other participating financial institutions will not be directly communicated to employees by such participating financial institutions. At least two participating financial institutions must bid for a particular option in order for a bid to be communicated to employees. The auction manager will communicate to employees only the highest bid for each option that the employee wishes to sell through the TSO system. If the auction manager's bid for the option is the highest bid, the auction manager will communicate the bid to the employee through the TSO system and purchase the option for its own account. If another participating financial institution has communicated to the auction manager a higher bid than the auction manager is prepared to make for its own account, then the auction manager will communicate the higher bid to the employee, purchase the option from the employee and separately transfer and settle with the participating financial institution that provided such bid.

Employees will use the TSO system to see the current highest bid price offered by the participating financial institutions for their vested options. The price offered by participating financial institutions in the TSO program for options is expected to be based on the exercise price of the option, the current market price of our Class A common stock, the volatility of our Class A common stock, current interest rates, the term of the option, the cost of the hedging activities by the participating financial institutions and current market conditions. Options with the same exercise price will not necessarily receive bids for the same price on a particular trading day. In addition, a participating financial institution may place a limit on the number of shares it will purchase at the price offered. We refer to this limit as the size of the bid.

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All participating financial institutions will be required to bid on all of the options offered for sale as a condition of participation in the TSO program, although they will be permitted to place bids of zero. A bid will be valid, at the time submitted by the participating financial institution, for at least 1,000 shares underlying options. A bid will remain in force until either the total available size of the bid is purchased at the bid price, a revised bid is submitted by the auction manager or a participating financial institution, or if as a result of an employee order there are fewer than 1,000 shares underlying options available on the existing bid. Employees will receive the highest bid price at the time their market order is received, which may not be the same as the latest quote provided through the TSO system.

Employees may place either market orders or limit orders when selling their options. A market order is an order to sell automatically at whatever price is determined once all the bids have been submitted. A limit order is an order to sell at a minimum price specified in advance by the employee, as long as one or more bidders is willing to pay that price. Limit orders may be set to expire at the end of a particular trading day or at the end of the current trading window. The sale of options subject to limit orders is not guaranteed if bids for such limit orders reach the limit price but the bids at that limit price expire before all limit orders at such limit price are filled. No order may exceed 1,000 shares underlying options. An employee can cancel the order at any time prior to execution of the order by the auction manager. Once the auction manager executes the order, the employee will be contractually bound to transfer the option. The auction manager may cancel any bid after it has been matched to an order in the event the auction manager determines that an obvious error or disruption occurred in connection with the execution of such order at a clearly erroneous price. Appropriate withholding taxes will be deducted from each sale, and the sale price, net of any withholding, will be transferred to the employee's brokerage account. Any option sold in the TSO program will be modified upon transfer to the auction manager in accordance with the automatic adjustment provisions described below.

The TSO program will be available during regular trading hours for the Nasdaq Stock Market only when our trading window is open. Currently our trading window opens on the second business day following the release of our financial results for the prior quarter and remains open through the last calendar day of the second month of the quarter. However, on the last day of each of our trading windows, the TSO program will close one hour prior to the close of regular trading hours for the Nasdaq Stock Market. In addition, we have the right under the distribution agreement for the TSO program to suspend the TSO program from time to time for any reason, including for maintenance and other technical reasons, and for periods when we believe that we are in possession of material, non-public information until the information is no longer material or the second business day after the information has been made public. Employees and the participating financial institutions may not be given advance notice of any suspension of the TSO program. An employee will be unable to sell options under the TSO program, even under a Rule 10b5-1 trading plan, when the TSO program has been suspended or is not otherwise available.

### *Eligibility and Participation*

Only nonstatutory stock options granted since our initial public offering in August 2004 will be eligible for the TSO program. In addition, options must be vested and exercisable in order to be sold in the program. Eligible options are not transferable other than in connection with the TSO program. Options assumed in connection with acquisitions are not eligible to be sold in the TSO program. In addition, if the remaining term of the option is less than six months, the option is not eligible to be sold in the TSO program.

Participation in the TSO program is voluntary. All employees other than our executive officers and certain other members of executive management may participate in the TSO program. Employees may decide to participate or not participate at any time; however, an employee may not participate in the TSO program once employment is terminated. In addition, members of our board of directors and consultants may not participate in the TSO program.

Employees may exercise or sell options, whether traditionally or in the TSO program, in any mix that they choose. We intend to make the TSO program available in all countries where we grant options except in countries where, due to local legal or tax implications, the TSO program would not benefit employees or would otherwise be impracticable.

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### *Amendment of Outstanding Options*

In connection with the TSO Program, we expect to unilaterally amend outstanding eligible options to include certain automatic adjustment provisions that will become effective only upon transfer of the option to the auction manager. These provisions include:

- *Reduction of Option Term.* For options with a remaining term of two years or more, the term of the option will be automatically reduced to two years. If the remaining term of the option is less than two years, the remaining term of the option will be further reduced in six-month increments until the remaining transferable term is six months. For example, an option with a 23-month term will be reduced to a term of 18 months. Therefore, if the remaining term is less than six months, the option is not eligible to be sold in the TSO program.
- *Removal of Employment Provisions.* The forfeiture provisions related to an employee's employment at Google will be removed.
- *Replacement of Antidilution Provisions.* The antidilution provisions of the option will be replaced with antidilution provisions customarily found in over-the-counter call options purchased and sold by securities dealers.
- *Conversion to Warrants.* The option will be converted into that number of warrants equal to the number of shares underlying the option to be transferred under the TSO program, with each warrant representing the right to buy one share of Class A common stock.

### **Hedging and Share Borrowing**

Participating financial institutions will sell shares of our Class A common stock under this prospectus to hedge their economic risk to changes in the price of our Class A common stock issuable under options purchased from Google employees in connection with the TSO program. These market transactions will include short sales of our Class A common stock equal to the aggregate number of shares underlying options purchased by a participating financial institution in the TSO program on a particular day. These market transactions may also include subsequent sales and purchases of our Class A common stock after the establishment of the initial hedge position by the participating financial institutions in amounts deemed by a participating financial institution to appropriately hedge its portfolio of options purchased under the TSO program that are not covered by this prospectus and that will vary depending, among other things, upon the prevailing price of our Class A common stock. Participating financial institutions intend to borrow such shares from securities lenders for delivery to purchasers in this offering, and will pay customary fees to the lenders for this service. Participating financial institutions may use shares obtained by them or their affiliates upon exercise of options originally transferred to them under the TSO program to return shares to the securities lenders. None of the shares sold by a participating financial institution pursuant to this prospectus will be shares acquired or borrowed from us.

### **USE OF PROCEEDS**

While we will not receive any proceeds from the sale of the shares of Class A common stock covered by this prospectus, we will receive the exercise price of options sold to participating financial institutions in connection with the TSO program if and when the participating financial institution pays cash to exercise such options. We will not receive any proceeds if the options sold to participating financial institutions in connection with the TSO program are exercised on a cashless basis.

### **PLAN OF DISTRIBUTION**

We have entered into a distribution agreement with the participating financial institutions relating to shares of our Class A common stock. Subject to certain conditions, the participating financial institutions will sell shares of our Class A common stock pursuant to this prospectus. The participating financial institutions will be underwriters with respect to any such sales.

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The shares of Class A common stock offered from time to time by this prospectus will be borrowed by the participating financial institutions from stock lenders. The participating financial institutions may use shares received from us upon exercise of the options purchased in the TSO program to settle or close out open borrowings created to hedge their exposure under the TSO program.

The financial institutions participating in the TSO program will enter into transactions to hedge their economic risk to changes in the price of our Class A common stock issuable under options purchased from Google employees in connection with the TSO program. These market transactions will include short sales of our Class A common stock equal to the aggregate number of shares underlying options purchased by a participating financial institution in the TSO program on a particular day. These market transactions, that are not covered by this prospectus, may also include subsequent sales and purchases of our Class A common stock after the establishment of the initial hedge position by the participating financial institutions in amounts deemed by a participating financial institution to appropriately hedge its portfolio of options purchased under the TSO program and that will vary depending, among other things, upon the prevailing price of our Class A common stock. These sales could have the effect of decreasing the market price of our Class A common stock and the value of options purchased in the TSO program. Purchases to cover a short position may have the effect of preventing or slowing a decline in the market price of the Class A common stock, and may stabilize, maintain or otherwise affect the market price of the Class A common stock. These purchases could have the effect of increasing the market price of our Class A common stock above the price that otherwise might exist. Such sales and purchases, if commenced, could be discontinued at any time. Both sales and purchases may affect the volatility of our Class A common stock. These transactions may be effected on the Nasdaq Global Select Market, in the over-the-counter market or otherwise.

Any profits or losses from these ongoing purchases and sales of shares of Class A common stock (or other instruments with a value related to the value of the shares of Class A common stock) will be solely for the account of the participating financial institutions and neither we nor the purchasers in the offering will have any interest in these transactions. The difference, if any, between the proceeds received by a participating financial institution in establishing its initial hedge position with respect to an option and the price at which the participating financial institution purchased such option under the Transferable Stock Option program may be deemed underwriter's compensation.

We have agreed to indemnify the participating financial institutions against certain liabilities, including liabilities under the Securities Act of 1933.

The participating financial institutions and their respective affiliates have, from time to time, performed, and may in the future perform, various financial advisory and investment banking services for us and our affiliates, for which they received or will receive customary fees and expenses. Morgan Stanley & Co. Incorporated is acting as the initial auction manager under the TSO program, and an affiliate of Citigroup Global Markets Inc. acts as the option administrator for the 2004 Stock Plan.

## **LEGAL MATTERS**

The validity of the shares of Class A common stock offered hereby will be passed upon for us by Wilson Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California. Davis Polk & Wardwell, New York, New York and Menlo Park, California, is representing the participating financial institutions.

## **EXPERTS**

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedule included in our Annual Report on Form 10-K for the year ended December 31, 2006, and management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2006, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our consolidated financial statements and schedule are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

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The following documents previously filed with the SEC are hereby incorporated by reference in this Prospectus (other than filings or portions of filings that are furnished under applicable SEC rules rather than filed):

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2006, filed with the SEC on March 1, 2007;
- Our Current Report on Form 8-K filed with the SEC on February 2, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 5, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 16, 2007;
- Our Current Report on Form 8-K filed with the SEC on March 28, 2007;
- Our Current Report on Form 8-K filed with the SEC on April 19, 2007 (relating to the announcement of the proposed DoubleClick acquisition);
- Item 8.01 of our Current Report on Form 8-K filed with the SEC on April 19, 2007; and
- The description of our Class A common stock contained in Google's Registration Statement on Form 10 as filed with the SEC on April 29, 2004, as amended, pursuant to Section 12(g) of the Exchange Act.

All reports and other documents subsequently filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date of this Prospectus and prior to the termination of this offering shall be deemed to be incorporated by reference in this Prospectus and to be part hereof from the date of filing of such reports and other documents.

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Google hereby undertakes to provide without charge to each person, including any beneficial owner, to whom a copy of this Prospectus is delivered, upon written or oral request of any such person, a copy of any and all of the information that has been or may be incorporated by reference in this Prospectus, other than exhibits to such documents. Requests for such copies should be directed to our Investor Relations department, at the following address:

Google Inc.  
1600 Amphitheatre Parkway  
Mountain View, CA 94043  
(650) 253-0000

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**Table of Contents****WHERE YOU CAN FIND ADDITIONAL INFORMATION**

We file annual, quarterly and special reports and other information with the SEC. You may read and copy documents we file at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the public reference room. The SEC also maintains an internet web site that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. The address of the site is [www.sec.gov](http://www.sec.gov).

Our internet address is [www.google.com](http://www.google.com) and the investor relations section of our website is located at <http://investor.google.com>. We make available free of charge, on or through the investor relations section of our website, annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act as soon as reasonably practicable after we electronically file such material with, or furnish it to, the SEC.

You should rely only on the information contained or incorporated by reference in this prospectus and in any accompanying prospectus supplement. We have not authorized anyone to provide you with information different from that contained in this prospectus. The shares of Class A common stock offered under this prospectus are offered only in jurisdictions where offers and sales are permitted. The information contained in this prospectus is accurate only as of the date of this prospectus, regardless of the time of delivery of this prospectus or any sale of the Class A common stock.

This prospectus constitutes a part of a Registration Statement we filed with the SEC under the Securities Act. This prospectus does not contain all of the information set forth in the Registration Statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to Google and the shares of Class A common stock, reference is hereby made to the Registration Statement. The Registration Statement may be inspected at the public reference facilities maintained by the SEC at the addresses set forth in the preceding paragraph. Statements contained herein concerning any document filed as an exhibit are not necessarily complete, and, in each instance, reference is made to the copy of such document filed as an exhibit to the Registration Statement. Each such statement is qualified in its entirety by such reference.

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