

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 101165 / September 25, 2024

ADMINISTRATIVE PROCEEDING
File No. 3-22181

In the Matter of

Alphabet Inc.

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Alphabet Inc. (“Alphabet” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. These proceedings arise out of violations of certain securities ownership reporting requirements of the federal securities laws.

2. Section 16(a) of the Exchange Act and the rules promulgated thereunder require officers and directors of a company with a registered class of equity security, and any beneficial owners of greater than 10% of such class, to file certain reports of securities holdings and transactions. Section 16(a) was motivated by a belief that "the most potent weapon against the abuse of inside information is full and prompt publicity" and by a desire "to give investors an idea of the purchases and sales by insiders which may in turn indicate their private opinion as to prospects of the company." H.R. Rep. 73-1383, at 13, 24 (1934). Reflecting this informational purpose, the obligation to file applies irrespective of profits or the filer's reasons for engaging in the transactions. The Sarbanes-Oxley Act of 2002 and Commission implementing regulations accelerated the reporting deadline for most transactions to two business days and mandated that all reports be filed electronically on EDGAR to facilitate rapid dissemination to the public.

3. Section 13(f)(1) of the Exchange Act and the rules promulgated thereunder generally require that entities exercised investment discretion over at least \$100 million in certain reportable securities file Forms 13F with the Commission on a quarterly basis. One Congressional purpose in enacting Section 13(f)(1) of the Exchange Act was to create "a central depository of historical and current data about the investment activities of institutional investment managers" to assist investors and government regulators. S. Rep. No. 94-75, 94th Cong., 2d Sess. 82-85 (1975).

4. While subject to the reporting requirements of Section 16(a) as a greater than 10% beneficial owner of a registered class of equity securities of Duolingo, Inc. ("Duolingo") and GitLab Inc. ("GitLab"), Alphabet violated Section 16(a) on multiple occasions by failing to timely file required reports of holdings and/or transactions. In addition, while subject to the reporting requirements of Section 13(f), Alphabet failed to timely file required Forms 13F for the period December 31, 2013 through June 30, 2022. Alphabet did not file such Forms 13F until November 15, 2022.

Respondent

5. Alphabet is a Delaware limited liability company headquartered in Mountain View, California. Alphabet is the successor issuer to Google Inc., and its Class A and Class C

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

shares are registered with the Commission under Section 12 of the Exchange Act and trade on the NASDAQ stock market (GOOGL, GOOG). Through direct and indirect wholly-owned subsidiaries, including subsidiaries that operate as venture capital investment arms that invest for profit, Alphabet has direct or indirect beneficial ownership of a portfolio of U.S. exchange-traded stocks. Since at least 2013, Alphabet has met the definition of an “institutional investment manager” as defined in Section 13(f) of the Exchange Act because it directly or indirectly through wholly-owned subsidiaries invests in or buys and sells securities for its own account. Alphabet has also exercised investment discretion over at least \$100 million in Section 13(f) securities since at least 2013.

Relevant Issuers

6. Duolingo is a Delaware corporation with its principal place of business in Pennsylvania. Duolingo’s Class A common stock has been registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: DUOL) since its initial public offering (“IPO”) on July 27, 2021. Alphabet and certain subsidiaries became greater than 10% beneficial owners of Duolingo’s registered class of Class A common stock at the time of the Duolingo IPO and remained as such until at least May 2022.

7. Gitlab is a Delaware corporation and is a remote-only company that does not maintain a headquarters. Gitlab’s Class A common stock has been registered with the Commission under Section 12 of the Exchange Act and traded on the NASDAQ stock market (ticker: GTLB) since its IPO on October 13, 2021. Alphabet and certain subsidiaries became greater than 10% beneficial owners of Gitlab’s registered class of Class A common stock at the time of the Gitlab IPO and remained as such until at least October 2023.

Applicable Legal Framework

8. Section 16(a) of the Exchange Act and the rules promulgated thereunder apply to every person who is the beneficial owner of more than 10% of any class of any equity security registered pursuant to Section 12 of the Exchange Act, and any officer or director of the issuer of any such security (collectively, “insiders”). For purposes of determining status as a greater than 10% beneficial owner under Section 16(a), the term means any person who is deemed a beneficial owner under Section 13(d) of the Exchange Act and the rules thereunder,² subject to limited exceptions.

² Under Section 13(d) of the Exchange Act and the application of Rule 13d-3, a beneficial owner of a security includes “any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise” has or shares voting or investment power with respect to such security. More than one person may be a beneficial owner of the same securities. Because a beneficial owner, under this standard, includes persons who have both direct and indirect, as well as shared, voting and investment power, beneficial ownership held by an entity is ordinarily also attributable to a control person of an entity and any parent company in a control relationship with such entity. See Amendments to Beneficial Ownership Reporting Requirements, SEC Release No.

9. Pursuant to Section 16(a) and Rule 16a-3, insiders are required to file initial statements of holdings on Form 3 and keep this information current by reporting transactions on Forms 4 and 5. Specifically, within 10 days after becoming an insider, or on or before the effective date of the Section 12 registration of the class of equity security, an insider must file a Form 3 report disclosing all securities of the issuer in which the insider has or is deemed to have a direct or indirect pecuniary interest. To keep this information current, insiders must file Form 4 reports disclosing transactions resulting in a change in beneficial ownership within two business days following the execution date of the transaction, except for limited types of transactions eligible for deferred reporting. Transactions required to be reported on Form 4 include purchases and sales of securities, exercises and conversions of derivative securities, and grants or awards of securities from the issuer. In addition, insiders are required to file a Form 5 report within 45 days after the issuer's fiscal year-end to report any transactions or holdings that should have been, but were not, reported on Form 3 or 4 (as applicable) during the issuer's most recent fiscal year and any transactions eligible for deferred reporting (unless the insider has previously reported all such transactions).

10. Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder require that "institutional investment managers"³ file Forms 13F with the Commission on a quarterly basis if they exercised investment discretion over "Section 13(f) Securities" having an aggregate fair market value of at least \$100 million on the last trading day of any month during the preceding calendar year. Section 13(f) Securities are equity securities of a class described in Rule 13f-1(c) under the Exchange Act. A list of these securities—called the Official List of Section 13(f) Securities—is available on the Commission's website.⁴ The Official List of Section 13(f) Securities primarily includes U.S. exchange-traded stocks (*e.g.*, NYSE, AMEX, NASDAQ), shares of closed-end investment companies, and shares of exchange-traded funds (ETFs). Certain convertible debt securities, equity options, and warrants are also on the Official List of Section 13(f) Securities. Pursuant to Rule 13f-1(b), an institutional investment manager is deemed to exercise investment discretion over all accounts for which it or any person or entity under the control of the institutional investment manager exercises investment discretion. Form 13F requires disclosure of, among other things, the fair market value of the institutional investment manager's Section 13(f) Securities under management and a schedule identifying the holdings. Forms 13F filed with the Commission are available to the public on the Commission's website.

34-39538 (Jan. 12, 1998), 63 Fed. Reg. 2854, 2857 (Jan. 16, 1998). If the organizational structure of the parent and related entities are such that the voting and investment powers over the subject securities are exercised independently, attribution may not be required for the purposes of determining the aggregate amount owned by the controlling persons if certain conditions concerning independence are met. *Id.*

³ Section 13(f)(6) of the Exchange Act defines "institutional investment manager" as including "any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person."

⁴ <http://www.sec.gov/divisions/investment/13flists.htm>

11. An institution that exercised discretion over accounts holding Section 13(f) Securities having an aggregate fair market value of least \$100 million on the last trading day of at least one month in any calendar year must file a Form 13F with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

12. There is no state of mind requirement for violations of Sections 13(f) and 16(a) and the rules thereunder.⁵ The failure to timely file a required report, even if inadvertent, constitutes a violation.⁶

Respondent Failed to File Required Section 16(a) Reports on a Timely Basis

13. As a greater than 10% beneficial owner of Duolingo since its IPO on July 27, 2021, Alphabet and certain direct or indirect subsidiaries were subject to the reporting requirements of Exchange Act Section 16(a) and remained subject to those requirements until at least May 2022. Alphabet and certain subsidiaries jointly filed an initial statement of beneficial ownership on Form 3 on July 27, 2021.

14. Subsequently, Alphabet and these subsidiaries failed to file on a timely basis multiple required Section 16(a) reports with the Commission, including to report transactions in Duolingo securities executed on the following dates that were required to be reported on Form 4 within two business days:

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/4/2021	11/8/2021	2/10/2022
4	11/15/2021	11/17/2021	2/10/2022
4	11/16/2021	11/18/2021	2/10/2022

⁵ See, e.g., SEC v. e-Smart Technologies, Inc., 82 F. Supp. 3d 97, 104 (D.D.C. 2015) (scienter is not required to establish a violation of Section 16(a) of the Exchange Act); cf. SEC v. Savoy Indus., Inc., 587 F.2d 1149, 1167 (D.C. Cir. 1978) (“Indeed, the plain language of section 13(d)(1) gives no hint that intentional conduct need be found, but rather, appears to place a simple and affirmative duty of reporting on certain persons. The legislative history confirms that Congress was concerned with providing disclosure to investors, and not merely with protecting them from fraudulent conduct”).

⁶ Cf. Oppenheimer & Co., Inc., 47 SEC 286, 1980 WL 26901, at *2 (May 19, 1980) (Commission opinion) (“We have previously held that the failure to make a required report, even though inadvertent, constitutes a willful violation”); Herbert Moskowitz, 77 SEC Docket 446, 2002 WL 434524, at *7 (Mar. 21, 2002) (Commission opinion) (“evidence of both motive for non-disclosure and actual market impact ... is irrelevant” to whether violations of Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder occurred); see generally Mandated Electronic Filing and Website Posting for Forms 3, 4 and 5, SEC Release No. 34-47809 (May 7, 2003), 68 Fed. Reg. 25788, 25792 (May 13, 2003) (noting that an issuer’s eligibility for temporary relief from disclosing Forms 4 filed one business day late by its insiders “does not change the fact that any Form 3, 4 or 5 filed later than the applicable due date violates Section 16(a)”) (emphasis added).

<u>Form Type</u>	<u>Date of Trans.</u>	<u>Due Date</u>	<u>Date Filed</u>
4	11/17/2021	11/19/2021	2/10/2022
4	11/18/2021	11/22/2021	2/10/2022
4	11/19/2021	11/23/2021	2/10/2022
4	11/22/2021	11/24/2021	2/10/2022
4	11/23/2021	11/26/2021	2/10/2022
4	11/24/2021	11/29/2021	2/10/2022
4	11/26/2021	11/30/2021	2/10/2022
4	11/29/2021	12/1/2021	2/10/2022

15. The above-described late-reported transactions in Duolingo primarily involved open-market sales of Duolingo shares that had an aggregate market value in excess of \$75 million. Alphabet and its subsidiaries failed to report any of these transactions until filing Forms 4 on February 10, 2022 to report such transactions—approximately three months after the sales began.

16. In addition, after Alphabet and certain other subsidiaries became greater than 10% beneficial owners of Gitlab upon its IPO on October 13, 2021, Alphabet failed to file any required Section 16(a) reports until May 6, 2022—almost seven months late. It was not until May 6, 2022 that Alphabet and these subsidiaries jointly filed a Form 3 and a Form 4 to report conversions of derivative securities.

17. As a result of the conduct described above, Respondent violated Section 16(a) of the Exchange Act and Rule 16a-3 thereunder.

Respondent Failed to Timely File Required Form 13F Reports

18. By at least the last trading day of December 2013, Alphabet exercised investment discretion over Section 13(f) Securities with a fair market value of at least \$100 million.

19. Because Alphabet exercised investment discretion over at least \$100 million worth of Section 13(f) Securities on the last trading day of at least one month in 2013, Alphabet was obligated to disclose its 2013 year-end holdings of Section 13(f) Securities by filing a Form 13F with the Commission within 45 days of December 31, 2013.

20. Subsequently, Alphabet's holdings of Section 13(f) Securities continued to be at least \$100 million. Thus, from at least February 14, 2014 until the present, Alphabet has had an obligation to file Forms 13F on a quarterly basis. Alphabet, however, failed to file any Forms 13F prior to November 15, 2022.

21. On November 15, 2022, Alphabet filed 36 Forms 13F covering the quarters

ending December 31, 2013 through September 30, 2022, 35 of which were untimely. Those filings showed, among other things, that Alphabet:

- As of December 31, 2013, held positions in 4 different Section 13(f) Securities, with a total market value of approximately \$365 million;
- As of June 30, 2018, held positions in 17 different Section 13(f) Securities, with a total market value of approximately \$1.19 billion;
- As of June 30, 2019, held positions in 26 different Section 13(f) Securities, with a total market value of approximately \$5.27 billion;
- As of June 30, 2020, held positions in 26 different Section 13(f) Securities, with a total market value of approximately \$2.17 billion;
- As of June 30, 2021, held positions in 44 different Section 13(f) Securities, with a total market value of approximately \$4.91 billion; and
- As of June 30, 2022, held positions in 65 different Section 13(f) Securities, with a total market value of approximately \$1.84 billion.

22. As a result of the conduct described above, Alphabet violated Section 13(f)(1) of the Exchange Act and Rule 13f-1 thereunder.

Respondent's Remedial Efforts

23. In determining to accept Respondent's Offer, the Commission considered certain remedial acts undertaken by Respondent and cooperation afforded to Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent Alphabet cease and desist from committing or causing any violations and any future violations of Sections 13(f)(1) and 16(a) of the Exchange Act and Rules 13f-1 and 16a-3 promulgated thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$750,000 to the Securities and Exchange Commission, for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If

timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Alphabet Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Thomas Smith, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary