



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

DIVISION OF  
CORPORATION FINANCE

February 1, 2019

Greg Samuel  
Haynes and Boone, LLP  
greg.samuel@haynesboone.com

Re: Paycom Software, Inc.  
Incoming letter dated December 18, 2018

Dear Mr. Samuel:

This letter is in response to your correspondence dated December 18, 2018 concerning the shareholder proposal (the “Proposal”) submitted to Paycom Software, Inc. (the “Company”) by James McRitchie and Myra K. Young (the “Proponents”) for inclusion in the Company’s proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division’s informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

Enclosure

cc: John Chevedden  
\*\*\*

February 1, 2019

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Paycom Software, Inc.  
Incoming letter dated December 18, 2018

The Proposal asks that the board take the steps necessary to reorganize the board into one class with each director subject to election each year.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(8)(ii) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board. It appears, however, that this defect could be cured if the Proposal were revised to provide that it will not affect the unexpired terms of directors elected prior to the Proposal's implementation. Accordingly, unless the Proponents provide the Company with a proposal revised in this manner, within seven calendar days after receiving this letter, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(8)(ii).

Sincerely,

Kasey L. Robinson  
Special Counsel

**DIVISION OF CORPORATION FINANCE  
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

December 18, 2018

**VIA E-MAIL: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Paycom Software, Inc.  
Stockholder Proposal of James McRitchie and Myra K. Young

Ladies and Gentlemen:

This letter and the enclosed materials are submitted on behalf of our client, Paycom Software, Inc. (the “Company”), to inform the Securities and Exchange Commission (the “Commission”) that the Company intends to omit from its proxy statement and form of proxy for its 2019 Annual Meeting of Stockholders (the “2019 Proxy Materials”) a stockholder proposal and supporting statement (the “Proposal”) submitted to the Company by James McRitchie and Myra K. Young (together, the “Proponents”). We also request confirmation that the staff of the Division of Corporation Finance (the “Staff”) will not recommend enforcement action to the Commission if the Company omits the Proposal from the 2019 Proxy Materials for the reasons discussed below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are sending this letter by electronic mail to the Staff at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended, we are simultaneously sending a copy of this letter and its attachments to the Proponents’ representative, John Chevedden, as notice of the Company’s intent to omit the proposal from the 2019 Proxy Materials. We take this opportunity to inform the Proponents that if the Proponents elect to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company.

Office of Chief Counsel  
Division of Corporation Finance  
December 18, 2018  
Page 2

## THE PROPOSAL

The Proposal states, in pertinent part:

RESOLVED: Paycom Software, Inc. (“Company” or “Paycom”) shareholders ask that our Board take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.

A copy of the Proposal as well as copies of related correspondence with the Proponents and their representative are attached to this letter as Exhibit A.

## BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Company may exclude the Proposal from the 2019 Proxy Materials pursuant to Rule 14a-8(i)(8)(ii) because the Proposal would remove directors that serve on the Company’s Board of Directors (the “Board”) from office prior to the expiration of the respective terms for which they were duly elected. As a result, the Company may exclude the Proposal from the 2019 Proxy Materials under Rule 14a-8(i)(8).

## ANALYSIS

### **The Proposal May Be Excluded Under Rule 14a-8(i)(8) Because It Would Remove Directors From Office Before The Expiration Of Their Respective Terms**

Rule 14a-8(i)(8)(ii) states that a stockholder proposal may be excluded from a company’s proxy statement if it “[w]ould remove a director from office before his or her term expired.” The purpose of Rule 14a-8(i)(8), according to the Commission, “is to make clear, with respect to corporate elections, that Rule 14a-8 is not the proper means for conducting campaigns or effecting reforms in elections of that nature, since other proxy rules, including Rule 14a-11, are applicable thereto.” SEC Release No. 34-12598 (July 7, 1976). In 2010, the Commission amended Rule 14a-8(i)(8) to codify a long-standing position of the Staff pursuant to which the Commission permitted the exclusion of stockholder proposals that would have removed a director from office before his or her term expired. See SEC Release No. 34-62764 (Aug. 25, 2010).

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Pursuant to Section 6.2 of the Company's Amended and Restated Certificate of Incorporation, the Board is divided into three (3) classes as nearly equal in size as practicable, with each class elected to serve a three-year term. In any given year, approximately one-third of the Board is up for election. The current members of the Board are serving terms that expire at the annual meetings to be held in 2019, 2020 and 2021. Directors elected at the 2019 Annual Meeting of Stockholders will serve until the 2022 Annual Meeting of Stockholders. The Proposal requests that the Board "take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year *and to complete this transition within one-year*" (emphasis added). If the Proposal were to be implemented according to the timeline requested by the Proponents (*i.e.*, in time for directors to be elected for one-year terms at the 2020 Annual Meeting of Stockholders), it would result in the removal of directors elected at the 2018 and 2019 Annual Meetings of Stockholders prior to the expiration of their respective terms.

The Staff has repeatedly concurred that stockholder proposals that, like the Proposal, would have the effect of cutting short the terms of sitting directors are excludable under Rule 14a-8(i)(8). See, for example, *Illumina, Inc.* (Feb. 1, 2018) (proposal requesting that the board reorganize the board of directors into one class with each director subject to election each year, excludable under Rule 14a-8(i)(8)(ii), where the Staff noted "There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(8)(ii) to the extent it could, if implemented, disqualify directors previously elected from completing their terms on the board."); *Simpson Manufacturing Co., Inc.* (Jan. 25, 2017) (same); *Neustar, Inc.* (Mar. 19, 2014) (same); *The Brink's Company* (Jan. 17, 2014) (same); *Kinetic Concepts, Inc.* (Mar. 21, 2011) (same).

The Proposal, like the nearly identical proposals submitted in *Illumina* and *Neustar*, would remove directors from office before the expiration of their respective terms. As a result, the Company is entitled to exclude the Proposal from the 2019 Proxy Materials in reliance on Rule 14a-8(i)(8).

## **CONCLUSION**

Based on the foregoing facts and analysis, we respectfully request that the Staff concur that the Company may exclude the Proposal from the 2019 Proxy Materials.

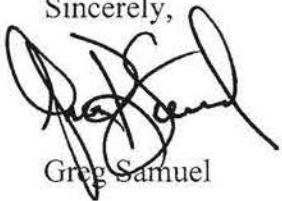
We would be happy to provide you with any additional information and answer any questions that you may have concerning this subject. Correspondence regarding this letter should be sent to

*haynesboone*

Office of Chief Counsel  
Division of Corporation Finance  
December 18, 2018  
Page 4

me at [greg.samuel@haynesboone.com](mailto:greg.samuel@haynesboone.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (214) 651-5645.

Sincerely,



A handwritten signature in black ink, appearing to read "Greg Samuel".

Enclosures

cc:      Craig E. Boelte, Paycom Software, Inc.  
          John Chevedden

EXHIBIT A

\*\*\*

Mr. Craig E. Boelte  
Paycom Software, Inc.,  
Attn: Corporate Secretary  
7501 W. Memorial Road,  
Oklahoma City, Oklahoma 73142

Phone Number: (405) 722-6900

Dear Corporate Secretary,

We are pleased to be shareholders in Paycom Software Inc (PAYC) and appreciate the company's leadership. We believe Paycom has further unrealized potential that can be unlocked through low or no cost measures by making our corporate governance more competitive.

We are submitting a shareholder proposal for a vote at the next annual shareholder meeting to **allow each director to be elected annually**. As mentioned in the proposal, this type of proposal won every this year at annual meetings and is widely considered a good governance practice.

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

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

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to facilitate prompt communication. Please identify me as the proponent of the proposal exclusively.

Your consideration and the consideration of the Board of Directors is appreciated in responding to this proposal. Please acknowledge receipt of my proposal promptly by email to

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Sincerely,



James McRitchie

November 21, 2018

Date



Myra K. Young

November 21, 2018

Date

cc: investors@paycom.com

[PAYC: Rule 14a-8 Proposal, November 21, 2018]  
[This line and any line above it – Not for publication.]  
ITEM 4\* – Elect Each Director Annually

**RESOLVED:** Paycom Software, Inc (“Company” or “Paycom”) shareholders ask that our Board take the steps necessary to reorganize the Board of Directors into one class with each director subject to election each year and to complete this transition within one-year.

**Supporting Statement:** Arthur Levitt, former Chairman of the Securities and Exchange Commission said, “In my view it's best for the investor if the entire board is elected once a year. Without annual election of each director shareholders have far less control over who represents them.”

In 2010 over 70% of S&P 500 companies had annual election of directors. Now that number stands at 89%.

Shareholder resolutions on this topic won an average of 86% support in 2018 as of early November. Wins included 96% at Haemonetics, 94% at Hecla Mining, 88.4% at FleetCor Technologies, and 84.4% at Illumina Inc. No shareholder on this topic was recorded as winning less than 67.3% of the vote. That low support was at Axon Enterprise Inc. ISS and Glass Lewis did not recommend against any of these proposals.

According to one of our largest shareholders; BlackRock, “Directors should be elected annually to discourage entrenchment and allow shareholders sufficient opportunity to exercise their oversight of the board.” BlackRock voted for shareholder proposals to declassify boards 6 times out of 6 in 2018, as did Vanguard.

According to Equilar; “A classified board creates concern among shareholders because poorly performing directors may benefit from an electoral reprieve. Moreover, a fraternal atmosphere may form from a staggered board that favors the interests of management above those of shareholders. Since directors in a declassified board are elected and evaluated each year, declassification promotes responsiveness to shareholder demands and pressures directors to perform to retain their seat. Notably, proxy advisory firms ISS and Glass Lewis both support declassified structures.”

This proposal should also be evaluated in the context of our Company's overall corporate governance as of the date of this submission: Paycom retains supermajority voting provisions. Shareholders cannot call special meetings. Shareholders have no right to act by written consent. A plurality vote standard is used to elect directors. The combined effect is to lock the board into an out-dated corporate governance structure and reduce board accountability to shareholders.

Please vote for: Elect Each Director Annually – Proposal [4\*]  
[This line and any below are *not* for publication]  
Number 4\* to be assigned by Paycom

James McRitchie and Myra K. Young,  
this proposal.

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sponsored

Notes:

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

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(l)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

**We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.**

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

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

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Mr. Craig E. Boelte  
Headquarters  
Paycom Software, Inc.,  
7501 W. Memorial Road,  
Oklahoma City, Oklahoma 73142

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**From:** Matthew Paque <matthew.paque@paycomonline.com>  
**Sent:** Tuesday, December 4, 2018 5:31 PM  
**To:** \*\*\*  
**Subject:**  
**Attachments:** 2018\_12\_04\_16\_58\_59.pdf

Mr. Chevedden,

On behalf of Craig Boelte, I'm writing to you to confirm receipt of a stockholder proposal submitted by James McRitchie and Myra K. Young. Please see the attached letter regarding the stockholder proposal. This letter has also been sent to you via FedEx.

**Matthew Paque | Executive Vice President of Legal and Compliance**  
7501 W. Memorial Rd | Oklahoma City, OK 73142  
(O) 1-405-722-6900



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December 5, 2018

VIA EMAIL AND OVERNIGHT MAIL

John Chevedden

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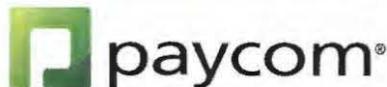
Dear Mr. Chevedden:

I am writing on behalf of Paycom Software, Inc. ("Paycom"), which received the stockholder proposal submitted on November 23, 2018 by James McRitchie and Myra K. Young (each, a "**Proponent**" and together, the "**Proponents**") pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for Paycom's 2019 annual meeting of stockholders (the "**Proposal**").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that stockholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the stockholder proposal was submitted. According to Paycom's stock records, neither Proponent is currently the registered holder of a sufficient number of shares to satisfy this requirement. In addition, to date we have not received proof that the Proponents have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to Paycom.

To remedy this defect, the Proponents must submit sufficient proof of their continuous ownership of the required number or amount of Paycom shares for the one-year period preceding and including November 23, 2018, the date the Proposal was submitted to Paycom. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- a written statement from the "record" holder of the Proponents' shares (usually a broker or a bank) verifying that the Proponents continuously held the required number or



John Chevedden  
December 5, 2018  
Page 2

amount of Paycom shares for the one-year period preceding and including November 23, 2018; or

- if the Proponents have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting the Proponents' ownership of the required number or amount of Paycom shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponents continuously held the required number or amount of Paycom shares for the one-year period.

To help stockholders comply with the requirements when submitting proof of ownership to companies, the SEC's Division of Corporation Finance published Staff Legal Bulletin No. 14F ("SLB 14F"), dated October 18, 2011, and Staff Legal Bulletin No. 14G ("SLB 14G"), dated October 16, 2012, copies of which are enclosed for your reference. SLB 14F and SLB 14G provide that for securities held through The Depository Trust Company ("DTC"), only DTC participants should be viewed as "record" holders of securities that are deposited at DTC. You can confirm whether the Proponents' bank or broker is a DTC participant by checking DTC's participant list, which is currently available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.xlsx>.

If the Proponents' broker or bank is a DTC participant, then the Proponents need to submit a written statement from the Proponents' broker or bank verifying that the Proponents continuously held the required number or amount of Paycom shares for the one-year period preceding and including November 23, 2018.

If the Proponents' broker or bank is not a DTC participant, then the Proponents need to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponents continuously held the required number or amount of Paycom shares for the one-year period preceding and including November 23, 2018. You should be able to find out the identity of the DTC participant by asking the Proponents' broker or bank. If the Proponents' broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponents' account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponents' shares is not able to confirm the Proponents' holdings but is able to confirm the holdings of the Proponents' broker or bank, then the Proponents need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements



John Chevedden  
December 5, 2018  
Page 3

verifying that, for the one-year period preceding and including November 23, 2018, the required number or amount of Paycom shares were continuously held: (i) one statement from the Proponents' broker or bank confirming the Proponents' ownership; and (ii) one statement from the DTC participant confirming the broker or bank's ownership. Please review SLB 14F and SLB 14G carefully before submitting proof of ownership to ensure that it is compliant.

The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 7501 W. Memorial Road, Oklahoma City, Oklahoma 73142. Alternatively, you may transmit any response by email to me at [cboelte@paycomonline.com](mailto:cboelte@paycomonline.com). A copy of Rule 14a-8, which applies to stockholder proposals submitted for inclusion in proxy statements, is enclosed for your reference.

If you have any questions with respect to the foregoing, please contact me at (405) 722-6900.

Sincerely,

A handwritten signature in black ink that reads "Craig Boelte".

Craig Boelte  
Chief Financial Officer, Treasurer  
and Corporate Secretary

Enclosures



11/23/2018

James Mcritchie  
\*\*\*

Re: Your TD Ameritrade Account Ending in \*\*\*

Dear James Mcritchie,

Thank you for allowing me to assist you today. Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra K. Young held, and had held continuously for at least thirteen months, 40 shares of Paycomm Software (PAYC) in their account ending in \*\*\* at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Client Services at 800-669-3900. We're available 24 hours a day, seven days a week.

Sincerely,

A handwritten signature in black ink that reads "Matt Beckman".

Matt Beckman  
Resource Specialist  
TD Ameritrade

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

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Mr. Craig E. Boelte  
Headquarters  
Paycom Software, Inc.,  
7501 W. Memorial Road  
Oklahoma City, Oklahoma 73142

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