

February 1, 2021

VIA E-MAIL

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

Re: ServiceNow, Inc. – Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen:

This letter is submitted on behalf of ServiceNow, Inc. (the “Company”) to notify the Staff of the Division of Corporate Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Company intends to exclude from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”) a shareholder proposal and statements in support thereof (the “Proposal”) received from James McRitchie (the “Proponent”), which are further described below and attached as Exhibit A hereto.

For the reasons outlined below, we hereby respectfully request that the Staff concur in our view that the Proposal may be properly excluded from the 2021 Proxy Materials and confirm that it will not recommend enforcement action to the Commission as a result of such exclusion.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), we are submitting this request for no-action relief via the Commission’s email address, shareholderproposals@sec.gov. In accordance with Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), this letter is being filed with the Commission no later than 80 calendar days before the Company intends to file the definitive 2021 Proxy Materials with the Commission, and we are contemporaneously sending a copy of this letter and its attachments to the Proponent and his designated agent, John Chevedden (the “Agent”), as notice of the Company’s intent to exclude the Proposal from the 2021 Proxy Materials. Likewise, we take this opportunity to inform the Proponent and his Agent that if the Proponent or his Agent elects 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.

SUMMARY OF THE PROPOSAL

The Proposal asks that the Company “take the steps necessary to amend our bylaws and each appropriate governing document to give holders in the aggregate of 15% net long of our outstanding common stock the power to call a special shareholder meeting.” A full copy of the Proposal is attached as Exhibit A hereto. In addition, pursuant to Staff Legal Bulletin No. 14C (June 28, 2005), relevant correspondence exchanged

with the Proponent is attached as Exhibit B hereto.

BASIS FOR EXCLUSION

The Company hereby respectfully requests that the Staff concur in its view that the Proposal may be properly excluded from the 2021 Proxy Materials on the basis of Rule 14a-8(i)(10): the Company has already substantially implemented the Proposal because the Board of Directors of the Company (the “Board”), after considering the advantages and disadvantages of allowing special meetings of shareholders to be called by shareholders, has determined (i) to approve amendments to the Company’s Restated Bylaws (the “Bylaws”), and (ii) to approve and recommend that the shareholders approve, amendments to the Company’s Restated Certificate of Incorporation, as amended (the “Certificate of Incorporation”), each to allow one or more shareholders holding at least 15% net long of the Company’s common stock for at least one year to call a special meeting of shareholders (the “Company Proposal”) and (iii) to direct that the Company Proposal be submitted to the Company’s shareholders for adoption at the 2021 Annual Meeting of Shareholders.

Because the Board lacks unilateral authority to amend the Certificate of Incorporation under the Delaware General Corporation Law (the “DGCL”), submission of the Company Proposal for a vote by the shareholders will fully implement the Proposal to the greatest extent allowed by applicable law and the Company’s governing documents, thereby rendering the Proposal excludable as substantially implemented under Rule 14a-8(i)(10).

ANALYSIS

I. The Proposal May Be Excluded Under Rule 14a-8(i)(10) Because the Company Has Substantially Implemented the Proposal

A. Rule 14a-8(i)(10) Background

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already “substantially implemented” the proposal. The Staff has stated that the purpose of the predecessor provision to Rule 14a-8(i)(10) was “to avoid the possibility of shareholders having to consider matters which have already been favorably acted upon by management.” *Exchange Act Release No. 12598* (July 7, 1976). The Commission later stated that a formalistic application of the rule requiring full implementation “defeated [the rule’s] purpose”, and then adopted a revised interpretation to the rule to permit the omission of proposals that had been “*substantially* implemented.” (emphasis added) *Exchange Act Release No. 20091* (Aug. 16, 1983) and *Exchange Act Release No. 40018*, at n.30 (May 21, 1998).

The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (avail. Mar. 28, 1991), and the Staff has consistently taken the position that a proposal has been “substantially implemented” and may be excluded under Rule 14a-8(i)(10) when a company can demonstrate that it has already taken actions to address the essential elements of the proposal. *See, e.g., Eli Lilly and Co.* (avail. Jan. 8, 2018); *Korn/Ferry International* (avail. July 6,

2017); *NETGEAR, Inc.* (avail. Mar. 31, 2015); *Pfizer, Inc.* (avail. Jan. 11, 2013, recon. Mar. 1, 2013); *Exelon, Inc.* (avail. Feb. 26, 2010); *Hewlett-Packard Co.* (avail. Dec. 11, 2007).

The text of the Proposal makes clear that the Proposal's essential objective is to allow holders of an aggregate of 15% net long of the Company's outstanding stock the power to call a special shareholders meeting. Directly related to the facts at hand, the Staff has consistently concurred that a board action creating a threshold aggregate ownership level for calling a special shareholders meeting substantially implements a shareholder proposal requesting the same, and therefore, the shareholder proposal may be excluded from the 2021 Proxy Materials in accordance with Rule 14a-8(i)(10). *See, e.g., The Western Union Company* (avail. Mar. 1, 2019); *Pfizer, Inc.* (avail. Jan. 16, 2018); *Windstream Holdings, Inc.* (avail. Mar. 5, 2015) (concurring in each case with the exclusion of a shareholder's proposal related to a shareholder special meeting demand threshold where the board of directors had approved, or would likely approve, an amendment to the company's charter and bylaws implementing an equivalent special meeting demand threshold).

B. The Company's Proposal Substantially Implements the Proposal

Section 211 of the DGCL provides that a special meeting of shareholders may be called by those authorized by the corporation's certificate of incorporation or bylaws or by its board of directors. Our Certificate of Incorporation, in Article VII, Section 3, and our Bylaws, in Article I, Section 1.2, currently allow a special meeting of shareholders to be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, or the Board acting pursuant to a resolution adopted by a majority of the total number of authorized directors. Pursuant to Section 242 of the DGCL, the Board lacks unilateral authority to amend the Certificate of Incorporation because such an amendment requires shareholder approval. Accordingly, the steps necessary under the DGCL to implement the Proposal include the Board's approval and submission to shareholders for a vote on an amendment to the Certificate of Incorporation that gives "holders in the aggregate of 15% of our outstanding common stock the power to call a special shareholder meeting." The Company believes that the Proposal may be properly excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(10) because the Board has determined to formally approve the inclusion of the Company Proposal that recommends shareholders approve amendments to the Certificate of Incorporation to allow shareholders holding at least 15% net long of the Company's common stock for at least one year to call a special meeting of shareholders. By approving the applicable amendments to the Certificate of Incorporation and Bylaws and submitting the Company Proposal for approval by the Company's shareholders, the Board will have taken all steps permitted by applicable law to substantially implement the Proposal and no further action on its part is needed to substantially implement the Proposal. If approved by the shareholders, the amendments to the Certificate of Incorporation would become effective upon filing an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware, which the Company would file promptly following the 2021 Annual Meeting of Shareholders. If the shareholders approve the amendments to the Certificate of Incorporation, the Board will also make certain conforming changes to the Bylaws, to be effective immediately upon the effectiveness of the amendments to the Certificate of Incorporation.

Although the Company Proposal has not yet been formally approved by the Board, the Staff has consistently granted no action relief under Rule 14a-8(i)(10) and has previously permitted companies to exclude similar

proposals in reliance on Rule 14a-8(i)(10) where the company represents to the Staff that its board of directors is expected to take action that would substantially implement the proposal. *See, e.g., The Western Union Company (Mar. 1., 2018); Windstream Holdings, Inc. (Feb. 14, 2017); Windstream Holdings, Inc. (Mar. 5, 2015); Visa Inc. (Nov. 14, 2014); Hewlett-Packard Co. (Dec. 19, 2013); Hewlett-Packard Co. (Dec. 18, 2013); Starbucks Corp. (Nov. 27, 2012); DIRECTV (Feb. 22, 2011); General Dynamics Corp. (Feb. 6, 2009).* As in these other cases, the Board is expected to take action to the fullest extent allowed by the Company's Certificate of Incorporation and DGCL to implement the essential objectives of the Proposal by approving the inclusion of the Company Proposal in the 2021 Proxy Materials. The Company Proposal directly addresses and satisfies the requirements of the Proposal. For this reason, the Company believes it may properly omit the Proposal from the 2021 Proxy Materials.

CONCLUSION

For the foregoing reasons, we are of the view that the Proposal will have already been substantially implemented by the Company. As such, on behalf of the Company, we respectfully request that the Staff confirm that it will not recommend enforcement action if the Company excludes the Proposal from its 2021 Proxy Materials in reliance on 14a-8(i)(10).

If you have any questions, or if the Staff is unable to concur with our view without additional information or discussions, we respectfully request the opportunity to confer with members of the Staff prior to the issuance of any written response to this letter. Please do not hesitate to contact the undersigned, Gordon K. Davidson, at (650) 335-7237 or [gdavidson@fenwick.com](mailto:g davidson@fenwick.com).

Very truly yours,

Gordon K. Davidson

Gordon K. Davidson

cc: James McRitchie
John Chevedden (as agent for James McRitchie)
Russ Elmer, General Counsel and Corporate Secretary, ServiceNow, Inc.

Enclosures

Exhibit A

Corporate Governance

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

Corporate Secretary
Russ Elmer
ServiceNow, Inc.
2225 Lawson Lane
Santa Clara, California 95054
Phone Number: (408) 501-8550
Via: russell.elmer@servicenow.com

Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting to allow shareholders to call **Special Shareholder Meetings**.

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

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

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

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

Sincerely,


James McRitchie

December 8, 2020

Date

cc: ir@servicenow.com

Penelope Bruce, penelope.bruce@servicenow.com

[NOW: Rule 14a-8 Proposal, December 14, 2020]
[This line and any line above it – *Not* for publication.]

ITEM 4* – Special Shareholder Meetings

RESOLVED: The shareholders of ServiceNow Inc (“Company”) hereby request the Board of Directors take the steps necessary to amend our bylaws and each appropriate governing document to give holders with an aggregate of 15% net long of our outstanding common stock the power to call a special shareowner meeting. This proposal does not impact our Board’s current power to call a special meeting.

SUPPORTING STATEMENT: Our Company allows a majority of the Board, the Chairman of the Board, the Chief Executive Officer or the President to call a special meeting, whereas Delaware law provisions also allow shareholders holding 10% of outstanding shareholder to call such meetings. A meaningful shareholder right to call a special meeting is a way to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle. This is important because there could be 15-months between annual meetings.

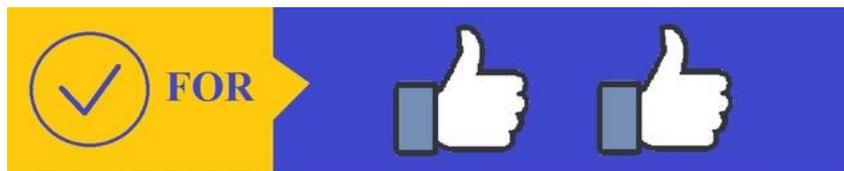
Currently, 67% of S&P 500 companies allow shareholders to call a special meeting. Well over half of S&P 1500 companies also allow shareholders this right.

According to Proxy Insight’s “Resolution Tracker,” between May 2019 and August 2020 the topic of providing shareholders a right to call a special meeting won 57.5% at Electronic Arts, 70.2% at Sonoco Products, 52.3% at Verizon Communications, 97.3% at SPAR Group, and 78.9% at FleetCor Technologies.

Large funds such as Vanguard, TIAA-CREF, BlackRock and SSgA Funds Management, Inc. (State Street) support the right of shareholders to call special meetings. For example, BlackRock includes the following in its proxy voting guidelines: “[S]hareholders should have the right to call a special meeting...”

We urge the Board to join the mainstream of major U.S. companies and establish a right for shareholders owning 15% of our outstanding common sock to call a special meeting.

Please vote for: Special Shareowner Meetings – Proposal [4*]



[This line and any below are *not* for publication]
Number 4* to be assigned by our Company

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



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

Reference: SEC Staff Legal Bulletin No. 14I (CF)

[16] Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

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

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

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

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

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

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

].

Exhibit B



December 22, 2020

Via Email and Federal Express

John Chevedden

Copy to:

James McRitchie

E-mail:

Dear Mr. Chevedden:

On December 14, 2020, ServiceNow, Inc. ("**ServiceNow**") received via email Mr. McRitchie's shareholder proposal (the "**Proposal**") for ServiceNow's 2021 Annual Meeting of Shareholders (the "**Meeting**") included in a letter dated December 8, 2020, pursuant to which Mr. McRitchie designated you as their agent with respect to all communications relating to the Proposal. One of the procedural requirements in submitting a shareholder proposal is to provide proof that, at the time Mr. McRitchie submitted his Proposal, he continuously held at least \$2,000 in market value of ServiceNow's shares for at least one year. Proof of ownership was omitted from the documents submitted with the Proposal. For your convenience, we have enclosed a copy of Rule 14a-8 under the Securities Exchange Act of 1934, which describes in Question 2 the eligibility requirements for submitting a proposal and how you can demonstrate to ServiceNow Mr. McRitchie's eligibility to submit a proposal.

On December 21, 2020, ServiceNow confirmed with its transfer agent that Mr. McRitchie was not a registered holder as of December 14, 2020, or for the one year preceding and including December 14, 2020. Therefore, in order to prove Mr. McRitchie's eligibility to ServiceNow, Mr. McRitchie must provide ServiceNow's Secretary with a written statement from the "record" holder of Mr. McRitchie's shares (usually a broker or bank) verifying that, at the time Mr. McRitchie submitted his Proposal (December 14, 2020), he continuously held at least \$2,000 in market value of ServiceNow shares for at least the one-year period preceding and including the submission date.

SEC Staff Legal Bulletin No. 14F ("**SLB 14F**") describes the alternatives for proving stock ownership and provides that the following is an acceptable format for Mr. McRitchie's broker or bank to provide the required proof of ownership as of the date Mr. McRitchie submitted the Proposal for purposes of Rule 14a-8(b):

"As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities]."

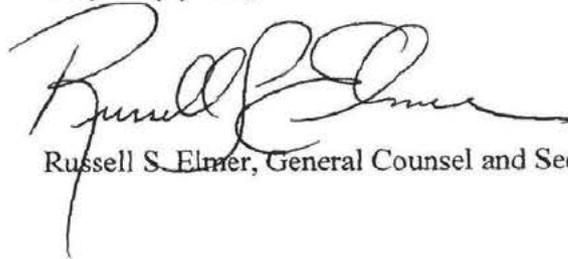
As outlined in SLB 14F, any written statement from a broker or bank must be provided from the DTC participant through which the shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check DTC's participant listing, which is currently available on the Internet at:

<http://dtcc.com/client-center/dtc-directories.aspx>

In the event that you are able to correct this deficiency, please send the written statement referred to above to ServiceNow, Inc., c/o Russell S. Elmer, General Counsel and Secretary, 2225 Lawson Lane, Santa Clara, CA 95054 (or alternatively you may transmit the statement electronically to russell.elmer@servicenow.com). Pursuant to Rule 14a-8, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this notification. If the deficiency noted above is not corrected within this time period, ServiceNow may elect not to include the Proposal in its proxy statement for its 2021 Annual Meeting of Shareholders.

If you have any questions, please feel free to contact me at 408-916-4588.

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell S. Elmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Russell S. Elmer, General Counsel and Secretary

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.*

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.*

(2) *If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.*

(3) *If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.*

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;*

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;*

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;*

(4) *Personal grievance; special interest: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;*

(5) *Relevance: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;*

(6) *Absence of power/authority: If the company would lack the power or authority to implement the proposal;*

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

(i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;

(ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13*: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent

possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010]

Amendment(s) published November 4, 2020, in 85 FR 70294

Effective Dates: Jan. 4, 2021 except for amendatory instruction 2.b adding 240.14a-8(b)(3) effective Jan. 4, 2021, through Jan. 1, 2023

2. Amend §240.14a-8 by:

i. Revising paragraphs (b)(1) and (2);

ii. Effective January 4, 2021, through January 1, 2023, adding paragraph (b)(3);

iii. Revising paragraph (c); and

iv. Revising paragraph (i)(12).

The revisions and addition read as follows:

§240.14a-8 Shareholder proposals.

* * * * *

(b) * * *

(1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3: How many proposals may I submit?* Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

* * * * *

(i) * * *

(12) *Resubmissions.* If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

(i) Less than 5 percent of the votes cast if previously voted on once;

(ii) Less than 15 percent of the votes cast if previously voted on twice; or

(iii) Less than 25 percent of the votes cast if previously voted on three or more times.

* * * * *



12/16/2020

James Mcritchie and Myra Young

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie and Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra Young held and had held continuously for at least 13 months, 15 common shares of ServiceNow Inc (NOW) in an 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,

Gabriel Elliott
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.

Market volatility, volume, and system availability may delay account access and trade executions.

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