



DIVISION OF  
CORPORATION FINANCE

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

March 10, 2022

Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP

Re: salesforce.com, inc. (the "Company")  
Incoming letter dated March 10, 2022

Dear Mr. Mueller:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by JZD Investments LLC et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its February 4, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Meredith Benton  
Whistle Stop Capital

February 4, 2022

VIA E-MAIL

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

Re: *salesforce.com, inc.*  
*Stockholder Proposal of JZD Investments LLC et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, salesforce.com, inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders (collectively, the “2022 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from JZD Investments LLC (“JZD”), Catherine Raphael (“Raphael”), and the Hilary Perry Clark Rev Trust (the “Clark Trust,” and together with JZD and Raphael, the “Proponents”).

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2022 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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## THE PROPOSAL

The Proposal states:

**Resolved:** Shareholders request that salesforce.com, inc. (“Salesforce”) report to shareholders on the effectiveness of the Company’s diversity, equity, and inclusion efforts. The reporting should be done at reasonable expense, exclude proprietary information, and address outcomes, using quantitative metrics for retention and promotion of employees, including data by gender, race, and ethnicity.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

## BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2022 Proxy Materials pursuant to:

- Rule 14a-8(b), Rule 14a-8(f)(1) and Rule 14a-8(c) because none of the Proponents have satisfied the procedural requirements in order to properly submit the Proposal;
- Rule 14a-8(i)(11) because it substantially duplicates another proposal previously submitted to the Company that the Company expects to include in its 2022 Proxy Materials; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

## ANALYSIS

### I. **The Proposal May Be Excluded Under Rule 14a-8(b), Rule 14a-8(f)(1), and Rule 14a-8(c).**

None of the Proponents has satisfied the procedural requirements in order to properly submit the Proposal. Specifically, JZD’s and the Clark Trust’s submissions can be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because they each failed to provide the requisite proof of continuous stock ownership on a timely basis in response to the Company’s proper request for that information, and Raphael’s submission can be excluded under Rule 14a-8(c) because Raphael has exceeded the one stockholder proposal per person limitation.

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A. *JZD And The Clark Trust Failed To Timely Establish Eligibility To Submit The Proposal Despite Proper Notice.*

The Company may exclude JZD's and the Clark Trust's submissions of the Proposal under Rule 14a-8(f)(1) because JZD and the Clark Trust failed to substantiate their eligibility to submit the Proposal under Rule 14a-8(b).<sup>1</sup>

1. Background.

On December 28, 2021 the Company received the Proposal, submitted by As You Sow on behalf of the Proponents via email. *See Exhibit A.* As You Sow did not include with such submission any documentary evidence of the Proponents' ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that any of the Proponents were record owners of Company shares.

Accordingly, the Company properly sought adequate documentation of share ownership from the Proponents consistent with the requirements of Rule 14a-8(b). Specifically, the Company sent the Proponents letters via email and UPS overnight delivery, identifying the deficiencies, notifying the Proponents of the requirements of Rule 14a-8, and explaining how the Proponents could cure the procedural deficiencies (the "Raphael Deficiency Notice," the "JZD Deficiency Notice," and the "Clark Trust Deficiency Notice," and together the "Proponent Deficiency Notices"). The Proponent Deficiency Notices, attached hereto as Exhibit B,<sup>2</sup> provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F") and No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8 as amended for meetings that occur

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<sup>1</sup> In response to a series of deficiency notices in connection with a different proposal submitted to the Company (the "Whistle Stop Proposal," as defined below), on January 19, 2022, Whistle Stop Capital sent to the Company documentation verifying Raphael's ownership in Company shares. *See Exhibit F.* As a result, the Company does not seek to exclude Raphael's submission of the Proposal on the basis of failure to demonstrate sufficient ownership of the Company's shares. As discussed below in part I.B, however, the Company believes that Raphael's submission of the Proposal may be excluded for violating Rule 14a-8(c).

<sup>2</sup> We note that the Proponents' representative, As You Sow, requested the Company to direct correspondence relating to the Proposal to Meredith Benton, an individual at Whistle Stop Capital. *See Exhibit A.* Accordingly, the Company addressed the Proponent Deficiency Notices to Meredith Benton at Whistle Stop Capital while also sending physical and electronic copies to As You Sow. *See Exhibits B and C.* To avoid confusion with a separate stockholder proposal submitted by Whistle Stop Capital on behalf of Raphael (discussed in more detail in part I.B of this letter), the Company will continue to refer to As You Sow when discussing transmittal or delivery of the Proponent Deficiency Notices.

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on or after January 1, 2022 but before January 1, 2023, SLB 14F, and SLB 14L. Specifically, the Proponent Deficiency Notices stated:

- the ownership requirements of Rule 14a-8(b);
- that the Company was unable to verify whether the Proponents were record owners of sufficient shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including “a written statement from the ‘record’ holder of [the Proponents’] shares (usually a broker or a bank) verifying that at the time [the Proponents] submitted the Proposal (the Submission Date), [the Proponents] continuously held the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements” in Rule 14a-8(b); and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date As You Sow received the Deficiency Notice.

The Company sent the Proponent Deficiency Notices to As You Sow via email and UPS overnight delivery on January 11, 2022, which was within 14 calendar days of the Company’s receipt of the Proposal. Overnight delivery service records confirm delivery of physical copies of the Proponent Deficiency Notices to As You Sow on January 12, 2022, and As You Sow confirmed receipt of the emails on January 11, 2022. See Exhibit C.

Subsequently, on January 27, 2022, two days after the 14-day deadline to cure the deficiencies had passed, the Company received an email from As You Sow (the “As You Sow Response”), including letters from Fidelity Investments, dated January 3, 2022, purporting to demonstrate the Proponents’ ownership in the Company’s shares (the “Broker Letters”), and a cover note stating the “letters were received on 1/12/2022.” See Exhibit D.

## 2. Analysis.

Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal for an annual meeting that is scheduled to be held on or after January 1, 2022, a stockholder proponent must have continuously held:

- (1) at least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years;

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- (2) at least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years;
- (3) at least \$25,000 in market value of the company's shares entitled to vote on the proposal for at least one year; or
- (4) the amounts specified in Rule 14a-8(b)(3) under the conditions and for the duration specified therein.<sup>3</sup>

These ownership requirements were described by the Company in each of the JZD Deficiency Notice and the Clark Trust Deficiency Notice.

Staff Legal Bulletin No. 14 (Jul. 13, 2001) specifies that when the stockholder is not the registered holder, the stockholder "is responsible for proving his or her eligibility to submit a proposal to the company," which the stockholder may do by one of the two ways provided in Rule 14a-8(b)(2). Further, the Staff has clarified that these proof of ownership letters must come from the "record" holder of the Proponent's stock, and that only Depository Trust Company ("DTC") participants are viewed as record holders of securities that are deposited at DTC. *See* SLB 14F. Rule 14a-8(f) provides that a company may exclude a stockholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. Rule 14a-8(f)(1) is extremely clear with respect to the deadline for correcting the deficiency and includes, in pertinent part, the following language (emphasis added):

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.*

Here, as established above, the Company satisfied its obligation under Rule 14a-8 by transmitting to As You Sow in a timely manner the JZD Deficiency Notice and the Clark

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<sup>3</sup> Under Rule 14a-8(b)(3), a stockholder may satisfy the ownership requirements by demonstrating that such stockholder 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 the stockholder has 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.

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Trust Deficiency Notice, which specifically set forth the information and instructions listed above and attached a copy of Rule 14a-8, SLB 14F, and SLB 14L. *See Exhibits B and C.* However, despite the clear explanation in the JZD Deficiency Notice and the Clark Trust Deficiency Notice to provide the requisite documentary support, both JZD and the Clark Trust failed to do so within the time period specified and as required by Rule 14a-8(f)(1). As such, JZD's and the Clark Trust's submission of the Proposal may be excluded.

The Staff has consistently concurred in the exclusion of proposals when proponents have failed, following a timely and proper request by a company, to timely furnish evidence of eligibility to submit the stockholder proposal pursuant to Rule 14a-8(b). For example, in *FedEx Corp.* (avail. June 5, 2019), the proponent submitted a proposal without any accompanying proof of ownership and did not provide any documentary support until 15 days following receipt of the company's deficiency notice. Despite being just one day late, the Staff concurred with exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). Additionally, in *AT&T Inc.* (avail. Jan. 29, 2019), the proponent submitted a proposal without proper verification of the proponent's ownership of the requisite number of company shares for the requisite period. In response, the company timely sent the proponent a notice explaining the deficiency via email only; however, the proof of ownership ultimately provided by the proponent was not submitted until three days after the deadline (17 days after receiving the company's timely deficiency notice). The Staff concurred that the proposal was excludable pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). *See also Time Warner Inc.* (avail. Mar. 13, 2018) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 18 days after receiving the company's timely deficiency notice); *ITC Holdings Corp.* (avail. Feb. 9, 2016) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 35 days after receiving the company's timely deficiency notice); *Prudential Financial, Inc.* (avail. Dec. 28, 2015) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 23 days after receiving the company's timely deficiency notice); and *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 16 days after receiving the company's timely deficiency notice). As discussed above, regardless of the content of the Broker Letters, no proof of ownership was transmitted to the Company until 16 days after As You Sow's receipt of the JZD Deficiency Notice and the Clark Trust Deficiency Notice, and, as with the above-cited precedent, the proof of ownership is therefore untimely. Therefore, consistent with *FedEx*, *AT&T* and the other cited precedents, the Company may exclude JZD's and the Clark Trust's submissions of the Proposal pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b).



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While SLB 14L suggests that there may be situations where the Staff considers it appropriate for a company to provide a second deficiency notice, the language of SLB 14L indicates that this situation is limited to if and when a company “sen[ds] a deficiency notice prior to receiving the proponent’s proof of ownership if such deficiency notice did not identify the specific defect(s).” SLB 14L. In the present case, the specific defect that remains (i.e., untimeliness) cannot be cured. Specifically, regardless of the contents of the Broker Letters, this documentation was not timely transmitted and, as demonstrated above, the Staff has consistently and strictly applied the timing requirements of Rule 14a-8. JZD and the Clark Trust were informed of the timing requirements in the JZD Deficiency Notice and the Clark Trust Deficiency Notice. Therefore, the Company has complied with both the letter and spirit of the Staff’s guidance in SLB 14L.

As in the precedent cited above, JZD and the Clark Trust failed to timely provide documentary evidence of ownership of Company shares and therefore have not demonstrated eligibility under Rule 14a-8 to submit the Proposal. Accordingly, we ask that the Staff concur that the Company may exclude JZD’s and the Clark Trust’s submissions of the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

*B. Raphael’s Submission Of The Proposal May Be Excluded Under Rule 14a-8(c) Because Raphael Submitted Two Proposals In Violation Of The One Proposal Rule And Failed To Correct This Deficiency After Proper Notice.*

The Company may exclude Raphael’s submission of the Proposal under Rule 14a-8(c) because Raphael has exceeded the one stockholder proposal per person limitation.

1. Background.

On November 29, 2021, the Company received a separate stockholder proposal relating to employment practices (the “Whistle Stop Proposal”) from Whistle Stop Capital (“Whistle Stop”) on behalf of Raphael, among others, via FedEx postmarked November 24, 2021, and an electronic copy via email on December 6, 2021. *See Exhibit E.* Subsequently, on December 28, 2021 the Company received the Proposal from As You Sow on behalf of Raphael via email. *See Exhibit A.*

Accordingly, as discussed above, the Company sent to As You Sow the Raphael Deficiency Notice, which, in addition to the procedural deficiencies relating to Raphael’s ownership of



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Company shares,<sup>4</sup> stated that Raphael, acting through Whistle Stop, had submitted the Whistle Stop Proposal to the Company, and, as a result, Raphael's submission of the Proposal through As You Sow appeared to violate Rule 14a-8(c) under the Securities Exchange Act of 1934, as amended, which provides that each person may submit no more than one proposal, directly or indirectly, to a company for a particular stockholders' meeting. The Raphael Deficiency Notice explained that the deficiency could be corrected by indicating which proposal Raphael would like to submit and which proposal she would like to withdraw.

As discussed above, the Company sent the Raphael Deficiency Notice to As You Sow<sup>5</sup> via email and UPS overnight delivery on January 11, 2022, which was within 14 calendar days of the Company's receipt of the Proposal. Overnight delivery service records confirm delivery of a physical copy of the Raphael Deficiency Notice to As You Sow on January 12, 2022, and As You Sow confirmed receipt of the emails on January 11, 2022. *See Exhibit C.*

Subsequently, on January 27, 2022, two days after the 14-day deadline to cure the deficiencies had passed, the Company received the As You Sow Response, which did not address the fact that Raphael had multiple proposals submitted on her behalf.<sup>6</sup>

## 2. The One-Proposal Limitation.

The Proposal may be excluded from the 2022 Proxy Materials by reason of Rule 14a-8(c), as amended, which states, "[e]ach person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting." When the Commission more than 40 years ago first adopted a limit on the number of proposals that a shareholder would be permitted to submit under Rule 14a-8, it stated that it was acting in response to the concern that some "proponents . . . [exceed] the bounds of reasonableness . . . by submitting

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<sup>4</sup> As mentioned above, the Company notes that it received on January 19, 2022 (which was within Raphael's 14-day deadline to respond to the Raphael Deficiency Notice) documentation in connection with the Whistle Stop Proposal verifying Raphael's ownership of Company shares. *See Exhibit F.*

<sup>5</sup> *See* n.2, *supra*.

<sup>6</sup> In a letter dated December 31, 2021, which was sent within 14 calendar days of the Company's receipt of the Proposal from As You Sow on behalf of Raphael, the Company also notified Raphael, with a copy to Whistle Stop, that (in addition to a deficiency with Raphael's proof of ownership in connection with the Whistle Stop Proposal) Raphael appeared to have violated Rule 14a-8(c) as a result of submission of the Proposal through As You Sow, since Raphael had already submitted the Whistle Stop Proposal through Whistle Stop. Whistle Stop responded to the proof of ownership deficiency on behalf of Raphael, but did not respond to the multiple proposal deficiency on behalf of Raphael. *See Exhibit F.*

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excessive numbers of proposals.” Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”). The Commission further stated that “[s]uch practices are inappropriate under Rule 14a-8 not only because they constitute an unreasonable exercise of the right to submit proposals at the expense of other shareholders but also because they tend to obscure other material matters in the proxy statements of issuers, thereby reducing the effectiveness of such documents.” *Id.* Thus, the Commission adopted a two-proposal limitation (subsequently amended to be a one-proposal limitation) but warned of the “possibility that some proponents may attempt to evade the [rule’s] limitations through various maneuvers.” *Id.* The Commission went on to warn that “such tactics” could result in the granting of no-action requests permitting exclusion of multiple proposals.

In 1982, when it proposed amendments to Rule 14a-8 to reduce the proposal limit from two proposals to one proposal, the Commission stated that its changes to the Rule and the interpretations thereunder were in part due to “the susceptibility of certain provisions of the rule and the staff’s interpretations thereunder to abuse by a few proponents and issuers.” Exchange Act Release No. 19135 (Oct. 14, 1982). Subsequently, in adopting the one-proposal limitation, it stated, “[t]he Commission believes that this change is one way to reduce issuer costs and to improve the readability of proxy statements without substantially limiting the ability of proponents to bring important issues to the shareholder body at large.” Exchange Act Release No. 20091 (Aug. 16, 1983).

In 2020, the Commission approved further amendments to Rule 14a-8 to apply the one-proposal limitation of Rule 14a-8(c) to “each person” rather than “each shareholder” and clarified that the Rule applies to proposals submitted “directly or indirectly” by such person. The Commission further explained that the amendment would not prevent a stockholder from seeking assistance from a representative or other person, but stated, “[h]owever, to the extent that the provider of such services submits a proposal, either as a proponent or as a representative, it will be subject to the one-proposal limit and will not be permitted to submit more than one proposal in total to the same company for the same meeting.”

3. Raphael Violated The One-Proposal Limitation Of Rule 14a-8(c) And Raphael Failed To Correct This Deficiency After Proper Notice.

The facts described above demonstrate that Raphael has submitted more than one proposal to the Company for the 2022 Annual Meeting. The applicability of Rule 14a-8(c)’s one-proposal limitation in this context is not affected by the fact that the two proposals were transmitted to the Company from Whistle Stop and As You Sow. As amended, Rule 14a-8(c) provides that a “person may submit no more than one proposal, directly *or indirectly*”

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(emphasis added). The Commission’s recent release adopting amendments to the procedural requirements of Rule 14a-8 clarified that the amendments to Rule 14a-8(c) were intended to “more effectively apply the one-proposal limit to *shareholders* and representatives of shareholders.” Exchange Act Release No. 34-89964, *Procedural Requirements and Resubmission Thresholds under Exchange Act Rule 14a-8*, at 58 (Sept. 23, 2020) (emphasis added). As a result, the Rule 14a-8(c) analysis is unchanged as it applies to *shareholders* who submit more than one proposal to a company.

The Staff has consistently concurred that the sole means to cure a violation of Rule 14a-8(c) after having received timely notice from a company of such violation is for the person to reduce the number of proposals submitted, directly or indirectly, to one proposal by indicating to the company which of the submitted proposals he or she wishes to withdraw and which *single proposal* he or she wishes to submit. *See, e.g., Bob Evans Farms, Inc.* (avail. May 31, 2001); *IGEN International, Inc.* (avail. July 3, 2000). As described above, the Company notified Raphael of the one-proposal limitation in Rule 14a-8(c). Despite receiving timely notice from the Company, Raphael failed to select which of the Whistle Stop Proposal or the Proposal she wished to withdraw in order to cure her violation of the one-proposal limitation in Rule 14a-8(c). Accordingly, consistent with the above-cited precedent, the Proposal is excludable with respect to Raphael pursuant to Rule 14a-8(f)(1) for violating Rule 14a-8(c), which states that each person may submit no more than one proposal, directly or indirectly, to a company for a particular stockholders’ meeting.

Based on the analysis above, because Raphael has failed to cure the deficiency of submitting multiple proposals in violation of Rule 14a-8(c), the Proposal may be excluded from the Company’s 2022 Proxy Materials.

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates Another Proposal That The Company Expects To Include In Its 2022 Proxy Materials.**

### *A. Background On Rule 14a-8(i)(11).*

The Proposal substantially duplicates a stockholder proposal the Company previously received from Laurent Ritter (the “Prior Proposal,” and together with the Proposal, the “Proposals”) and statement in support thereof (together with the Supporting Statement, the “Supporting Statements”) because both Proposals seek to have the Company assess and

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report on the Company's diversity, racial equity, and inclusion initiatives. The Prior Proposal states:

**RESOLVED:** Shareholders of Salesforce.com, Inc. ("Salesforce") request that the Board of Directors commission a racial equity audit to be conducted by an independent third-party with input from civil rights organizations, employees, communities in which Salesforce operates, and other stakeholders that will analyze Salesforce's impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on Salesforce's business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information and any information that could be construed as an admission in pending litigation, should be publicly disclosed on Salesforce's website.

A copy of the Prior Proposal and statement in support thereof is attached to this letter as Exhibit G.

The Company received the Prior Proposal on December 21, 2021, whereas the Company subsequently received the Proposal on December 28, 2021. The Company intends to include the Prior Proposal in the 2022 Proxy Materials. As discussed below, the Proposals share the same core concern, and the Proposal therefore is properly excludable under Rule 14a-8(i)(11).

*B. The "Substantially Duplicates" Standard.*

Rule 14a-8(i)(11) provides that a stockholder proposal may be excluded if it "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." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." 1976 Release. When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. *See, e.g., Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as

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substantially duplicative where the Staff explained that “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions” despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company’s political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations as substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring with the exclusion of a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest as substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Bank of America Corp.* (avail. Feb. 24, 2009) (concurring with the exclusion of a proposal requesting the adoption of a 75% hold-to-retirement policy as subsumed by another proposal that included such a policy as one of many requests); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring with the exclusion of a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders as substantially duplicative of a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share). The Staff has traditionally referred to Rule 14a-8(i)(11)’s substantial duplication standard as assessing whether the later proposal presents the same “principal thrust” or “principal focus” as a previously submitted proposal, *see Pacific Gas & Electric Co.* (avail. Feb. 1, 1993), or the same core concern.

### *C. The Proposal Has The Same Core Concern As The Prior Proposal.*

As noted above, the Resolved clause of the Prior Proposal “request[s] that the Board of Directors commission a racial equity audit . . . that will analyze [the Company]’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on [the Company]’s business.” The Prior Proposal’s supporting statement asserts that “[c]ompanies would benefit from assessing the risks of products, services, and overall corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities.” It notes that the Company has taken some measures to address racial justice and equity, including “hiring its first Chief Equality Officer” and the Company’s “goal of ‘doubling’ its ‘representation of Black leaders’ and increasing its representation of underrepresented minority leaders by 50%

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by 2023,” but asserts that the Company has “failed to improve its U.S. workforce diversity numbers for Latinx and Black employees in a meaningful way.” The supporting statement notes that the audit should analyze the impact of these issues on “[the Company]’s business and employees.”

Although phrased differently, the principal concern of the Prior Proposal encompasses the diversity, equity, and inclusion concern of the Proposal: both Proposals include a request that the Company report on its racial equity, diversity, and inclusion initiatives, including the effects of those initiatives on its business and workforce. It is important to note that, although not pertinent to the Rule 14a-8(i)(11) analysis addressed in this no-action request, the Company believes that the actions and issues addressed in the Proposals and Supporting Statements do not accurately reflect the Company’s commitment to, support of, and existing actions to address the important social issues of civil rights, racial justice and equity, and diversity and inclusion, as reflected in Company policies and in various commitments issued by the Company.<sup>7</sup> The Company is committed to driving equality for all of its stakeholders—its employees, customers, partners, local communities, and society at large. In this regard, the Company plans to continue to work to effect systemic change in communities by driving inclusive business practices, investing resources, empowering minority-led organizations, cultivating partnerships, designing technology with everyone in mind, and advocating for policies for racial equality.

The duplication in the core concern and primary focus of the Proposals is demonstrated by the overlapping language, focus, and concerns expressed in the Proposals and their Supporting Statements:

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<sup>7</sup> See, e.g., Racial Equality Justice Taskforce (describing the Company’s commitment to double U.S. representation of Black leaders and increase underrepresented minority representation employee representation by 50% by 2023, invest \$200 million and one million volunteer hours in racial equality and justice over the next five years, \$100 million to Black-owned business, and \$100 million to URM-founded companies by 2023, and advocate for police reform, civic engagement, and economic empowerment policies), available at <https://www.salesforce.com/company/equality/racial-equality-justice-taskforce/>.



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<i>The Prior Proposal</i>	<i>The Proposal</i>
<i>The Proposals both ask for an assessment and report on the Company’s racial equity, diversity, and inclusion efforts.</i>	
<p>“Shareholders of Salesforce.com, Inc. (“Salesforce”) request that the Board of Directors commission a racial equity audit . . . that will analyze [the Company]’s impacts on civil rights, equity, diversity and inclusion, and the impacts of those issues on [the Company]’s business . . . . A report on the audit . . . should be publicly disclosed on [the Company]’s website.”</p>	<p>“Shareholders request that salesforce.com, inc. (“Salesforce”) report to shareholders on the effectiveness of the Company’s diversity, equity, and inclusion efforts.”</p> <p>“The reporting should . . . address outcomes, using quantitative metrics for retention and promotion of employees, including data by gender, race, and ethnicity.”</p>
<i>Both Supporting Statements address numerous times the diversity of the workforce, including concerns with quantitative data relating to workforce representation.</i>	
<p>“[The Company]’s . . . decision to place all such groups (Women, Black, Latinx, Indigenous, Multiracial, LGBTQ+ employees, People with Disabilities, and Veterans) into one broad category means that certain groups could remain underrepresented at [the Company].”</p> <p>“The percentage of Latinx and Black employees has barely changed, going from 4% to 5.1% and from 2% to 4.3% from 2015-2021 respectively.”</p> <p>“[The Company]’s goal of ‘doubling’ its ‘representation of Black leaders’ and increasing its representation of underrepresented minority leaders by 50%</p>	<p>“The reporting should . . . address outcomes, using quantitative metrics for retention and promotion of employees, including data by gender, race, and ethnicity.”</p> <p>“Companies with the strongest racial and ethnic diversity are 35 percent more likely to have financial returns above industry medians.”</p> <p>“Companies in the top quartile for gender diversity are 21 percent more likely to outperform on profitability and 27 percent more likely to have superior value creation.”</p>



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<p>by 2023 would still leave Blacks vastly underrepresented considering that only 2.7% of [the Company]’s leaders and managers were Black in 2020.”</p>	<p>“A study of the S&amp;P 500 found that the most diverse companies had an average annual five year stock return 5.8 percent higher than the least-diverse companies.”</p> <p>“For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of the entry-level workforce and only 4 percent of executives.”</p>
<p><i>Each notes that addressing issues raised in the Proposals would benefit the Company.</i></p>	
<p>“Companies would benefit from assessing the risks of products, services, and overall corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities.”</p>	<p>“Studies have pointed to the corporate benefits of a diverse workforce, including: Companies with the strongest racial and ethnic diversity are 35 percent more likely to have financial returns above industry medians . . . .”</p>

The differences in the wording and scope of the Proposals do not change the fact that the audit and report called for under the Prior Proposal would address and encompass the concern regarding the “effectiveness of the Company’s diversity, equity, and inclusion efforts” raised in the Proposal. Both Proposals focus on an assessment and report on the actual or potential negative impacts of the Company’s racial equity, diversity, and inclusion initiatives on the Company’s business and workforce. The fact that the Prior Proposal seeks “input from civil rights organizations, employees, communities in which [the Company] operates, and other stakeholders” to evaluate the Company’s diversity, equity, and inclusion initiatives, while the Proposal does not seek such input, does not prevent the Proposal from sharing the same core concern as the Prior Proposal.

The Staff has consistently concurred that two proposals can be substantially similar within the meaning of Rule 14a-8(i)(11) notwithstanding differences in the wording or scope of actions requested. For example, in *Cooper Industries, Ltd.* (avail. Jan. 17, 2006), the Staff concurred with the exclusion under Rule 14a-8(i)(11) of a proposal requesting that the company “review its policies related to human rights to assess areas where the company

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needs to adopt and implement additional policies and to report its findings” as substantially duplicating a previously submitted proposal requesting that the company “commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights.” *See also, e.g., Caterpillar Inc. (AFSCME Employees Pension Plan)* (avail. Mar. 25, 2013) (concurring with the exclusion of a proposal requesting a report as substantially duplicative of a proposal that the company “review and amend, where applicable,” certain policies and post a summary of the review on the company’s website, despite inclusion of an additional action in connection with the requested report); *Ford Motor Co.* (avail. Feb. 19, 2004) (concurring with the exclusion of a proposal calling for internal goals related to greenhouse gases as substantially duplicative of a proposal calling for a report on historical data on greenhouse gas emissions and the company’s planned response to regulatory scenarios, where the company successfully argued that “[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce greenhouse gas emissions in order to enhance competitiveness”).

In addition, even if the Proposal is in some respects narrower or more limited than the Prior Proposal, or touches on issues that are not also directly referenced in the Prior Proposal, the Staff previously has concurred with the exclusion of stockholder proposals as substantially duplicative even when the second proposal differs in scope from the first proposal. For example, in *Amazon.com, Inc. (Mixon et al.)* (avail. Apr. 7, 2021), the company received an initial proposal with virtually the same “Resolved” clause as the Prior Proposal and thereafter received another proposal also centered around a narrower aspect of the potential impacts of the company’s operations on communities of color (in particular, concerning environmental and health harms associated with pollution from the company’s delivery logistics and other operations). The company argued, and the Staff concurred, that the previously received proposal encompassed the same concern as the subsequent proposal, “focusing on the Company’s entire business, which includes the Company’s delivery logistics and other operations targeted by the [subsequent p]roposal, and focusing on concerns over the potential impact of the [c]ompany’s operations on racial equity broadly,” and therefore that the more narrowly focused proposal was substantially duplicative of the previously received under Rule 14a-8(i)(11). Similarly, in *JPMorgan Chase & Co. (New York City Employees’ Retirement System et al.)* (avail. Mar. 14, 2011), the Staff concurred that a proposal that specifically requested a report on internal controls over the company’s mortgage servicing operations could be omitted in reliance on Rule 14a-8(i)(11) as substantially duplicative of other previous proposals that asked for general oversight on the development and enforcement of already-existing internal controls related to loan modification methods.

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Irrespective of the differences in scope and detail, the principal focus and the core issue of general mortgage modification practices remained the same. *See also Exxon Mobil Corp. (Goodwin et al.)* (avail. Mar. 19, 2010) (concurring with the exclusion of a proposal seeking consideration of a decrease in the demand for fossil fuels as substantially duplicative of a proposal asking for a report to assess the financial risks associated with climate change); *Lehman Brothers Holdings Inc.* (avail. Jan. 12, 2007) (concurring with the exclusion of a proposal requesting semi-annual reports on independent expenditures, political contributions, and related policies and procedures as substantially duplicative of a proposal that sought an annual disclosure of independent expenditures and political contributions); *American Power Conversion Corp.* (avail. Mar. 29, 2002) (concurring with the exclusion of a proposal asking that the company's board of directors create a goal to establish a two-thirds independent board as substantially duplicative of a proposal that sought a policy requiring nomination of a majority of independent directors).

More recently, the Staff has agreed that “where one proposal incorporates or encompasses the elements of a later proposal, the subsequent proposal may be excluded.” *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (“*Exxon Mobil 2020*”). In *Exxon Mobil 2020*, an initially received proposal requested a report disclosing the company's lobbying policies and payments, while a subsequently received proposal requested a report describing how the company's lobbying activities aligned with the Paris Climate Agreement's global warming goal. The company argued that the initially received proposal encompassed the subject matter raised in the subsequent proposal, covering the same subject but with a broader scope, and therefore “subsume[d] and incorporate[d] the [subsequent p]roposal, which address[ed] a subset of issues (limited to the subject of climate change) covered by the [subsequent p]roposal.” The Staff concurred with the exclusion of the subsequent proposal under Rule 14a-8(i)(11) as substantially duplicative of the initial proposal. *See also Duke Energy Corp.* (avail. Feb. 19, 2016) (concurring with the exclusion of a proposal requesting that the board review and report on the company's relationship with organizations that may engage in lobbying as substantially duplicative of an earlier-received proposal requesting disclosure of the company's lobbying policies and payments); *Pfizer Inc.* (avail. Feb. 17, 2012) (concurring with the exclusion of a proposal requesting a lobbying priorities report as substantially duplicative of an earlier-received proposal requesting increased lobbying disclosure). As in *Exxon Mobil 2020* and the other lines of precedent cited above, the Prior Proposal subsumes and incorporates the Proposal, which addresses a subset of issues. Specifically, the Proposal focuses on the narrower topic of reporting on the effectiveness of the Company's diversity, racial equity, and inclusion initiatives, while the Prior Proposal encompasses the subject matter of the Proposal by broadly assessing the Company's impacts on “civil rights, equity, diversity, and inclusion.”

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As noted above, the purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” 1976 Release. Because the Proposal substantially duplicates the Prior Proposal, the Company’s stockholders should not be required to twice consider whether the Company should issue a report that addresses diversity, racial equity, and inclusion initiatives, and the Company should not have to risk creating stockholder confusion by asking them to vote on two proposals addressing the same concern. In addition, if the voting outcome on the two proposals differed, the stockholder vote would not provide guidance on what actions stockholders want the Company to pursue, given that the same actions would be necessary to implement either proposal. For example, if the Prior Proposal was approved by the Company’s stockholders, but the Proposal was not approved, it would be unclear whether stockholders did not support the Proposal because they viewed it as encompassed by the Prior Proposal, or whether the Company should interpret those results to mean that under both the Prior Proposal and the Proposal, the Company’s stockholders did not share a concern about potential implications of the Company’s diversity, equity, and inclusion efforts on its workforce.

In line with the precedents cited above, the variations in wording do not change the conclusion that the Proposal would have its core concern addressed through implementation of the Prior Proposal and shares the same core concern and principal focus. Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the Prior Proposal.

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

#### *A. The Substantial Implementation Standard.*

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal from its proxy materials “[i]f the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of stockholders having to consider matters which already have been favorably acted upon by the management.” Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when proposals were “‘fully’ effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from

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existing company policy by only a few words. *See* Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of proposals that had been “substantially implemented.” *Id.* The 1998 amendments to Rule 14a-8 codified this position. *See* Exchange Act Release No. 40018 at n.30 and accompanying text (May 21, 1998).

Applying this standard, the Staff has noted, “a determination that the [c]ompany 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. (Recon.)* (avail. Mar. 28, 1991). In other words, substantial implementation under Rule 14a-8(i)(10) requires a company’s actions to have satisfactorily addressed the proposal’s underlying concerns and its essential objective. *See The Wendy’s Co.* (avail. Apr. 10, 2019) (concurring with the exclusion of a proposal requesting a report assessing human rights risks of the company’s operations, including the principles and methodology used to make the assessment, the frequency of assessment, and how the company would use the assessment’s results, where the company had a code of ethics and a code of conduct for suppliers and disclosed on its website the frequency and methodology of its human rights risk assessments); *see also PG&E Corporation* (avail. Mar. 10, 2010) (concurring with the exclusion of a proposal seeking a “semiannual report disclosing specific information concerning the company’s charitable contributions” where the company argued its existing disclosures on its website and corporate charitable contributions program substantially implemented the proposal, and the Staff noted that the company’s “policies, practices and procedures compare[d] favorably with the guidelines of the proposal”); *Anheuser-Busch Cos., Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *Talbots Inc.* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999). Accordingly, Rule 14a-8(i)(10) permits exclusion of a stockholder proposal when a company has already substantially implemented the essential objective of the proposal, even if by means other than those specifically requested by the stockholder proponent. *See, e.g., The Procter & Gamble Co.* (avail. Aug. 4, 2010); *Wal-Mart Stores, Inc. (AFL-CIO Reserve Fund et al.)* (avail. Mar. 30, 2010). In other words, differences between a company’s actions and a stockholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives. *See, e.g., Exxon Mobil Corp. (Rossi)* (avail. Mar. 19, 2010).

Moreover, the Staff consistently has concurred with the exclusion of stockholder proposals requesting reports where the company has already publicly disclosed the subject matter of the requested report. *See, e.g., Hess Corp.* (avail. Apr. 11, 2019) (concurring with the exclusion of a proposal requesting a report on aligning the company’s carbon footprint with the

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necessary greenhouse gas reductions to achieve the Paris Agreement’s goal where the company had met the essential objective through its most recent sustainability report, its responses to the Carbon Disclosure Project Climate Change Questionnaire, and its 2018 Investor Day Presentation); *Mondelēz International, Inc.* (avail. Mar. 7, 2014) (concurring with the exclusion of a proposal requesting a report on the human rights risks of the company’s operations and supply chain where the company had achieved the essential objective of the proposal by publicly disclosing its risk management processes); *Entergy Corp.* (avail. Feb. 14, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal calling for a report “on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions” when the company already provided environmental sustainability disclosures on its website and in a separate report); *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion of a proposal requesting that the company assess and report on human rights standards where the company had achieved the essential objective of the proposal through publicly available reports, risk management processes, and a code of conduct); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal that requested a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that, together, provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”); *Caterpillar, Inc.* (avail. Mar. 11, 2008) (concurring with the company’s exclusion of a stockholder proposal requesting that the company prepare a global warming report where the company had already published a report that contained information relating to its environmental initiatives); *Wal-Mart Stores, Inc.* (avail. Mar. 10, 2008) (same); *PG&E Corp.* (avail. Mar. 6, 2008) (same); *The Dow Chemical Co.* (avail. Mar. 5, 2008) (same); *Johnson & Johnson* (avail. Feb. 22, 2008) (same).

Further, as particularly relevant here, the Staff has concurred with the exclusion of stockholder proposals seeking a report when the contents of the requested report were disclosed in multiple pages on the company’s corporate website. *See, e.g., The Gap, Inc.* (avail. Mar. 16, 2001) (concurring with the exclusion of a proposal requesting a board report on the child labor practices of the company’s suppliers, including specific details, where the company asserted its Code of Vendor Conduct and “extensive internal as well as external monitoring programs,” website information regarding both, and willingness to engage with interested parties substantially implemented the proposal).



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*B. The Company Has Substantially Implemented The Proposal Through Its Public Reporting On Diversity, Equity, And Inclusion Efforts.*

The Proposal requests that the Company “report to shareholders on the effectiveness of the Company’s diversity, equity, and inclusion efforts” and that the requested report should “address outcomes, using quantitative metrics for retention and promotion of employees, including data by gender, race, and ethnicity.” As discussed below, the Company’s annual Stakeholder Impact Report,<sup>8</sup> Equality Data Report,<sup>9</sup> EEO-1 Report,<sup>10</sup> Quarterly Equality Updates,<sup>11</sup> and other disclosures included on its Diversity, Equity and Inclusion website (collectively, the “DEI Disclosures”),<sup>12</sup> substantially implements the essential objective of the Proposal, which is that the Company report on the effectiveness of its diversity, equity and inclusion efforts and programs (collectively, the “DEI Efforts”). As discussed below, the Company has been reporting on the effectiveness of its DEI Efforts, including providing quantitative data, since at least since 2018 (which the Company sometimes refers to as fiscal year 2019, as its fiscal year end is January 31). Specifically, the Impact Report and the Equality Data Report include data from 2018, 2019, and 2020, and the Company intends to provide annual updates for 2021 and beyond.

1. Overview Of The Company’s Reporting.

The Company annually publishes the Impact Report for transparency and to allow key stakeholders to stay informed about and track the Company’s progress with respect to environmental, social, and governance (“ESG”) factors. The contents of the Impact Report are informed by an ESG materiality assessment, which identifies key topics that are most important to the Company’s stakeholders, including its stockholders, customers, partners and

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<sup>8</sup> Available at <https://stakeholderimpactreport.salesforce.com> (the “Impact Report”); see also FY21 Stakeholder Impact Report Summary, available at <https://stakeholderimpactreport.salesforce.com/pdf/FY21-SIR-Summary-ESG-Metrics-And-Indicators.pdf> (the “Impact Report Summary”).

<sup>9</sup> See Equality Data, available at <https://equalitydata.herokuapp.com> (the “Equality Data Report”).

<sup>10</sup> Available at [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/reports/sfdc-certified-eEO-1-2021-report.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/reports/sfdc-certified-eEO-1-2021-report.pdf) (the “EEO-1 Report”).

<sup>11</sup> Available at <https://www.salesforce.com/news/stories/author/salesforce-racial-equality-and-justice-taskforce> (each a, “Quarterly Equality Update”).

<sup>12</sup> See We Believe in EQUALITY for All, available at <https://www.salesforce.com/company/equality> (the “DEI Website”).

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employees, and to the Company's success. As it relates to the issues raised by the Proposal, the Impact Report discusses the Company's commitment to equality for all<sup>13</sup> and its efforts to build a workforce that better represents society through workforce development programs that widen access to the tech industry by training and enabling a diverse workforce and sets forth the goals against which the Company measures its progress in this area.<sup>14</sup> The information in the Impact Report is supplemented by the Equality Data Report, which provides year-over-year quantitative reporting on key gender, race, and ethnicity workforce representation metrics, both in the United States and globally, and the Quarterly Equality Updates, which the Company began providing in August 2020<sup>15</sup> for more frequent progress reporting in between its annual reports. For additional transparency, the EEO-1 Report provides a snapshot in time of the Company's U.S. employment demographics based on job categories, genders,<sup>16</sup> and ethnicities in the format prescribed by the U.S. Department of Labor. The Company also maintains the DEI Website, which summarizes each of the Company's goals and progress towards those goals and details important diversity, equity, and inclusion initiatives the Company is undertaking to accelerate its progress.

## 2. Publicly Disclosed Quantitative DEI Goals And Progress Reporting.

As discussed in the Impact Report, equality is a core value at the Company, which strives to create a workplace that reflects the diverse communities around the world and where everyone feels seen, heard, valued, and empowered to succeed.<sup>17</sup> As part of its vision to build a workplace that looks like society, the Company has publicly announced several quantitative goals against which it measures its progress on, and the effectiveness of, its DEI Efforts.

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<sup>13</sup> See Equality for All, Impact Report, available at <https://stakeholderimpactreport.salesforce.com/equality-for-all>.

<sup>14</sup> See Partnering to Build a Diverse Workforce, Impact Report, available at <https://stakeholderimpactreport.salesforce.com/workforce-development/partnering-to-build-a-diverse-workforce>.

<sup>15</sup> See Our Initial Quarterly Equality Update, available at <https://www.salesforce.com/news/stories/our-initial-quarterly-equality-update>.

<sup>16</sup> The Company uses traditional gender categories of male and female to align with U.S. government reporting requirements. However, the Company deeply respects that gender is non-binary and that its reporting in this manner should not represent its position on the issue.

<sup>17</sup> See Our Path to Equality, Impact Report, available at <https://stakeholderimpactreport.salesforce.com/equality-for-all/our-path-to-equality>.

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Page 20 of the Impact Report Summary provides a tabular view of the Company's representation goals (the "Representation Goals"):

- 50% goal for underrepresented group representation for the Company's U.S. technology workforce (Women, Black, Latinx, Indigenous) by 2023 (fiscal 2024);
- doubling of the Company's U.S. representation of Black leaders (VP+) by 2023;
- 50% increase in U.S. representation of underrepresented minority ("URM") leaders by 2023; and
- 50% increase in U.S. representation of URM employees by 2023.<sup>18</sup>

The Company established the first goal in 2019 (fiscal 2020) and began reporting on its progress the following year. As disclosed in the Impact Report and the Impact Report Summary (at 20), the Company's underrepresented group representation currently sits at 47.4% compared to 43.9% last year. Notably, the Company's progress on this goal was reviewed and verified by its independent auditor.<sup>19</sup> The latter three goals were established in 2020 and, as disclosed in the Impact Report and the Impact Report Summary, the Company expects to begin reporting annually on its progress on those goals later this year when it publishes data for 2021 (with such progress also expected to be reviewed and verified by the Company's independent auditor).

In addition to reporting on the Company's progress on its Representation Goals, the Company publicly discloses in the Equality Data Report diversity indicators for global employee gender representation, U.S. employee gender representation, U.S. employee race and ethnicity representation, and total U.S. URM representation. For additional transparency, the Company allows readers to sort and filter the data to isolate information for positions in "Leadership," "Tech," or "Non-Tech." The quantitative disclosures provided in the Equality Data Report allow readers to assess trends regarding the Company's DEI Efforts and the effectiveness of its initiatives to advance diversity, equity, and inclusion among its workforce. Through November 2020, the Company's:

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<sup>18</sup> See also ESG Metrics & Indicators, Impact Report, available at <https://stakeholderimpactreport.salesforce.com/esg-metrics-and-indicators#equality>.

<sup>19</sup> See Independent Accountants' Review Report: Schedule of Select Diversity and Equality Metrics, Ernst & Young LLP (Mar. 4, 2021), available at [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/reports/sustainability/sustainability-fy21-ghg-ey-ia-report.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/reports/sustainability/sustainability-fy21-ghg-ey-ia-report.pdf).

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- Global workforce consisted of 33.6% women (a six percent increase from 2018) while vice presidents and above (i.e., “Leadership”) were represented by 25.5% women globally (a 14% increase from 2018);
- U.S. workforce consisted of 36.1% women (a seven percent increase from 2018) and 37.4% people of color (broken down by Asian, Hispanic or Latinx, Black or African American, Multiracial, Native Hawaiian or other Pacific Islander, and Native American or Native Alaskan) (a six percent increase from 2018);
- vice presidents and above in the U.S. were 27.7% women (a 13% increase from 2018) and 25.3% people of color (broken down by Asian, Hispanic or Latinx, Black or African American, Multiracial, Native Hawaiian or other Pacific Islander, and Native American or Native Alaskan) (a 10% increase from 2018); and
- total URM representation (including Black, Latinx, Indigenous, and Multiracial Employees) was 11.2% (a 10% increase from 2018).

Similarly, the Equality Data Report also provides U.S. representation data through its voluntary Self-ID initiative for other communities such as LGBTQ+, people with disabilities, and veterans, and the Company’s annual quantitative disclosures in its EEO-1 Report reflects the progress it has made towards building a diverse workforce through increased hiring of women and underrepresented minorities.

Besides workforce representation, the Company also annually reports on its progress with respect to other DEI Efforts. For example, the Equality Data Report provides updates on the Company’s “Areas of Progress.” This includes attrition of URM employees, which the Company reports is down 27% compared to last year and is currently lower than the Company’s total employee attrition rate. This also includes information about the Company’s commitment since 2015 to advance “Equal Pay for Equal Work,” and noting that the Company “conduct[s] a pay assessment every year to adjust salaries by gender, race, and ethnicity” and “adjust[s] salaries up, never down.” As of March 29, 2021, the Company has spent more than \$16 million to address unexplained differences to date.<sup>20</sup>

In addition, to provide increased transparency about progress on its DEI Efforts in between publication of the annual reports, the Company provides Quarterly Equality Updates on its

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<sup>20</sup> See Our Equality Commitments, Impact Report, available at <https://stakeholderimpactreport.salesforce.com/equality-for-all/our-equality-commitments>; see also 2020 Salesforce Equal Pay Update, available at <https://www.salesforce.com/news/stories/2020-salesforce-equal-pay-update>.

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website.<sup>21</sup> These updates include select quantitative metrics on the Company's progress for hiring women and underrepresented minorities and also provide detailed qualitative information on the Company's initiatives. Taken together, each of these disclosures, including the quantitative data provided by the Company, allows investors to "assess, understand, and compare the effectiveness of [the Company's] diversity, equity, and inclusion programs."

### 3. Other DEI Disclosures.

In addition to the Impact Report, the Impact Report Summary, and the Equality Data Report, the Company maintains the DEI Website, which contains a summary of the quantitative progress updates contained in those reports and provides qualitative information about the Company's workforce diversity, equity, and inclusion initiatives and programs. These cover the areas of employee recruiting, development, retention and promotion, and include, for example:

- Recruiting: a diversity-focused recruiting team dedicated to sourcing talent from URM communities, a pilot program to increase URM candidate referrals, and inclusive hiring training for recruiters and interviewers to create a fair, consistent, and equitable candidate experience.
- Development: investments in developing future diverse leaders through key programs such as the Equality Mentorship program, which connects employees of color with executive mentors,<sup>22</sup> an in-house URM development program in partnership with the Executive Leadership Council, and Career Milestones, a pilot program for URM career sponsorship and coaching.
- Retention: launch of Warmline—an employee advocacy program to help support and empower women and Black, Indigenous, and Latinx employees to have confidential conversations with an advocate around issues of belonging, equity and career navigation.
- Promotion: a required training for all managers that includes components on bias awareness, and a newly instituted promotion process to help ensure the Company's process is fair, consistent, and accessible to all.

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<sup>21</sup> See, e.g., Quarterly Equality Update: Driving Racial Equality and an Inclusive Employee Experience, available at <https://www.salesforce.com/news/stories/quarterly-equality-update-inclusive-employee-experience> (Aug. 12, 2021).

<sup>22</sup> See The Importance of Mentorship to Drive Racial Equality in Your Workplace, available at <https://www.salesforce.com/blog/mentorship-workplace-racial-equality> (Aug 5, 2020).

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As previously mentioned, the Staff has consistently concurred with the exclusion of stockholder proposals seeking a report when the contents of the requested report were disclosed in multiple locations on the company's corporate website. *See, e.g., Mondelēz International, Inc.* (avail. Mar. 7, 2014); *The Coca-Cola Co.* (avail. Jan. 25, 2012, *recon. denied* Feb. 29, 2012); *The Gap, Inc.* (avail. Mar. 16, 2001). Of particular note is the Staff's decision in *Comcast Corp.* (avail. Apr. 9, 2021) in which a similar proposal requested an annual report "assessing the [c]ompany's diversity and inclusion efforts" and requiring the report to include "the process that the [b]oard follows for assessing the effectiveness of its diversity, equity and inclusion programs," and "the [b]oard's assessment of program effectiveness, as reflected in any goals, metrics, and trends related to its promotion, recruitment, and retention of protected classes of employees." The company argued that its annual diversity report and other disclosures on its website and proxy statement regarding oversight and assessment of its diversity, equity, and inclusion efforts substantially implemented the proposal. The Staff concurred with exclusion of the proposal under Rule 14a-8(i)(10).

Thus, as in the precedent cited above, the Company has already addressed the essential objective of the Proposal. Specifically, as demonstrated above, through the public statements made in the DEI Disclosures, the Company has already substantially implemented the Proposal's request that the Company report on an assessment of its DEI Efforts. As described above, the Company has disclosed quantitative metrics each year since at least 2018, reflecting its diversity goals and progress toward those goals. Through the Impact Report, the Equality Data Report, the EEO-1 Report, and the Company's policies and initiatives described on the DEI website, the Company provides frequent updates regarding these initiatives, while making clear its organization-wide commitment to diversity and inclusion and transparency about its progress. Accordingly, as the Company has substantially implemented the Proposal, it may be excluded from the Company's 2022 Proxy Materials under Rule 14a-8(i)(10).

## CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2022 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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

# GIBSON DUNN

Office of Chief Counsel  
Division of Corporation Finance  
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should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Sarah Dods, salesforce.com, inc.  
Scott Siamas, salesforce.com, inc.  
Meredith Benton, Whistle Stop Capital  
Shareholder Engagement, As You Sow  
Shari Behnke, JZD Investments LLC  
Catherine Raphael  
Hilary Perry Clark, Hilary Perry Clark Rev Trust

**EXHIBIT A**



From: **Shareholder Engagement** [REDACTED]  
Date: Tue, Dec 28, 2021 at 5:28 PM  
Subject: Salesforce.com - Shareholder Proposal Documents  
To: [REDACTED] [corporatesecretary@salesforce.com](mailto:corporatesecretary@salesforce.com)  
<[corporatesecretary@salesforce.com](mailto:corporatesecretary@salesforce.com)>, [investor@salesforce.com](mailto:investor@salesforce.com) <[investor@salesforce.com](mailto:investor@salesforce.com)>  
CC: Meredith Benton [REDACTED] Gail Follansbee [REDACTED]  
Rachel Lowy [REDACTED]

Dear Ms. Dods,

Attached please find the lead-filer and co-filer filing document packets submitting a shareholder proposal for inclusion in the company's 2022 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and our records show that it has been delivered today, Tuesday, December 28, 2021 at 12:27pm.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and happy holidays,  
Rachel Lowy

**Rachel Lowy** (she/her/hers)  
**Shareholder Relations Associate**

*As You Sow*

Main Post Office, P.O. Box 751 | Berkeley, CA 94701

[REDACTED]



**VIA FEDEX & EMAIL**

December 27, 2021

Sarah Dods  
Chief Compliance Officer & Corporate Secretary  
Salesforce.com, Inc.  
415 Mission Street  
3rd Floor  
San Francisco, CA 94105  
[REDACTED]

Dear Ms. Dods,

*As You Sow* is filing a shareholder proposal on behalf of JZD Investments LLC (S) (“Proponent”), a shareholder of Salesforce.com Inc, for inclusion in Salesforce.com Inc’s 2022 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. The Proponent is available for a meeting with the Company regarding this shareholder proposal at the following days/times: January 6, 2022 at 10:00am Pacific Time or January 6, 2022 at 10:30am Pacific Time.

The Proponent is designating *As You Sow* as a representative for all issues in this matter. Meredith Benton, Workplace Equity Program Manager [REDACTED] is the contact person on behalf of *As You Sow*. **Please also send all correspondence regarding this proposal to**

[\[REDACTED\]](mailto:[REDACTED])

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

Sincerely,

Andrew Behar  
CEO, *As You Sow*

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [corporatesecretary@salesforce.com](mailto:corporatesecretary@salesforce.com)  
[investor@salesforce.com](mailto:investor@salesforce.com)

11/29/2021 | 12:12:26 PM PST

Andrew Behar  
CEO  
As You Sow  
2020 Milvia St, Suite #500  
Berkeley, CA 94704

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file or co-file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: JZD Investments LLC (S)  
Company: Salesforce.com Inc  
Subject: Greater Disclosure of Material Corporate Diversity, Equity and Inclusion Data

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by As You Sow.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED]

Any correspondence regarding meeting dates must **also be sent to my representative:**

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
  
C9D6759E6BB642E...

Name: Shari Behnke

Title: Trustee



**VIA FEDEX & EMAIL**

December 27, 2021

Sarah Dods  
Chief Compliance Officer & Corporate Secretary  
Salesforce.com, Inc.  
415 Mission Street  
3rd Floor  
San Francisco, CA 94105  
[REDACTED]

Dear Ms. Dods,

*As You Sow* is co-filing a shareholder proposal on behalf of the following Salesforce.com Inc shareholders for action at the next annual meeting of Salesforce.com Inc:

- Catherine Raphael
- Hilary Perry Clark Rev Trust (S)

Shareholders are co-filers of the enclosed proposal with JZD Investments LLC (S), who is the Proponent of the proposal. *As You Sow* has submitted the enclosed shareholder proposal on behalf of Proponent for inclusion in the 2022 proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Co-filers will either: (a) be available on the dates and times offered by the Proponent for an initial meeting, or (b) authorize *As You Sow* to engage with the Company on their behalf, within the meaning of Rule 14a-8(b)(iii)(B).

*As You Sow* is authorized to act on Catherine Raphael's or Hilary Perry Clark Rev Trust (S)'s behalf with regard to withdrawal of the proposal. A representative of the lead filer will attend the stockholders' meeting to move the resolution as required.

Letters authorizing *As You Sow* to act on co-filers' behalf are enclosed.

We are hopeful that the issue raised in this proposal can be resolved. To schedule a dialogue, please contact Meredith Benton, Workplace Equity Program Manager, at [REDACTED]. Please send all correspondence **with a copy to** [REDACTED].

Sincerely,

Andrew Behar  
CEO, *As You Sow*

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [corporatesecretary@salesforce.com](mailto:corporatesecretary@salesforce.com)  
[investor@salesforce.com](mailto:investor@salesforce.com)

11/9/2021 | 8:21:17 AM PST

Andrew Behar  
CEO  
As You Sow  
2020 Milvia St, Suite #500  
Berkeley, CA 94704

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to file or co-file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Catherine Raphael (S)  
Company: Salesforce.com Inc  
Subject: Greater Disclosure of Material Corporate Diversity, Equity and Inclusion Data

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by As You Sow.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED]

Any correspondence regarding meeting dates must **also be sent to my representative:**

[REDACTED]

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
*Catherine Raphael*  
29EB720C3306423...

Name: Catherine Raphael

Title: MS.



12/13/2021 | 6:35:09 AM PST

Andrew Behar  
CEO  
As You Sow  
2020 Milvia St, Suite #500  
Berkeley, CA 94704

**Re: Authorization to File Shareholder Resolution**

Dear Andrew Behar,

The undersigned (“Stockholder”) authorizes As You Sow to <sup>file or co-file</sup> a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Hilary Perry Clark Rev Trust (S)  
Company: Salesforce.com Inc  
Subject: Greater Disclosure of Material Corporate Diversity, Equity and Inclusion Data

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives As You Sow the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by As You Sow.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates:




Any correspondence regarding meeting dates must **also be sent to my representative:**

[REDACTED]

The Stockholder also authorizes As You Sow to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
  
DDE006DC49484F4...

Name: Hilary Perry Clark

Title: Trustee

**Resolved:** Shareholders request that salesforce.com, inc. (“Salesforce”) report to shareholders on the effectiveness of the Company's diversity, equity, and inclusion efforts. The reporting should be done at reasonable expense, exclude proprietary information, and address outcomes, using quantitative metrics for retention and promotion of employees, including data by gender, race, and ethnicity.

**Supporting Statement:** Quantitative data is sought so that investors can assess, understand, and compare the effectiveness of companies’ diversity, equity, and inclusion programs and apply this analysis to investors’ portfolio management and securities’ selection process.

**Whereas:** Studies have pointed to the corporate benefits of a diverse workforce, including:

- Companies with the strongest racial and ethnic diversity are 35 percent more likely to have financial returns above industry medians.
- Companies in the top quartile for gender diversity are 21 percent more likely to outperform on profitability and 27 percent more likely to have superior value creation.<sup>1</sup>
- A study of the S&P 500 found that the most diverse companies had an average annual five year stock return 5.8 percent higher than the least-diverse companies.<sup>2</sup>

Promotion rates show how well diverse talent is nurtured at a company. Unfortunately, women and non-White employees experience “a broken rung” in their careers. For every 100 men who are promoted, only 86 women are promoted. Non-White women are particularly impacted, comprising 17 percent of the entry-level workforce and only 4 percent of executives.<sup>3</sup> Employees with the potential for advancement have a higher retention rate.<sup>4</sup>

Morgan Stanley has found that: “Employee retention that is above industry peer averages can indicate the presence of competitive advantage. This advantage may lead to higher levels of future profitability than past financial performance would indicate.”<sup>5</sup> Companies with high employee satisfaction have also been linked to annualized outperformance of over two percent.<sup>6</sup>

Salesforce has acknowledged that: “Creating a culture of Equality isn’t just the right thing to do; it’s also the smart thing. It empowers us to innovate, build deeper connections with our customers, and ultimately become a better company.”<sup>7</sup> It also states that its senior leaders “receive monthly overall and VP+ scorecards, detailing headcount, hiring, attrition, and promotion data by Gender (Global) and Race (U.S.).”<sup>8</sup> However, while Salesforce shares hiring data, it has not shared attrition and promotion data by gender, race, or ethnicity. The company’s public reporting does not allow investors to determine the effectiveness of its human capital management programs.

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<sup>1</sup>[https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity\\_full-report.ashx](https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/delivering%20through%20diversity/delivering-through-diversity_full-report.ashx)

<sup>2</sup> <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

<sup>3</sup> [https://wiw-report.s3.amazonaws.com/Women\\_in\\_the\\_Workplace\\_2021.pdf](https://wiw-report.s3.amazonaws.com/Women_in_the_Workplace_2021.pdf)

<sup>4</sup> <https://www.benefitspro.com/2019/04/17/promotions-play-a-key-role-in-employee-turnover/?slreturn=20210926165506>

<sup>5</sup> [https://www.morganstanley.com/im/publication/insights/articles/article\\_culturequantframework\\_us.pdf](https://www.morganstanley.com/im/publication/insights/articles/article_culturequantframework_us.pdf)

<sup>6</sup> [https://www.institutionalinvestor.com/article/b1tx0zzdhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm\\_medium=email&utm\\_campaign=The%20Essential%20I%20100721&utm\\_content=The%20Essential%20I%20100721%20CID\\_eb103a9e15359075f72a85f7ff534c79&utm\\_source=CampaignMonitorEmail&utm\\_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies](https://www.institutionalinvestor.com/article/b1tx0zzdhnf5x/Want-to-Pick-the-Best-Stocks-Pick-the-Happiest-Companies?utm_medium=email&utm_campaign=The%20Essential%20I%20100721&utm_content=The%20Essential%20I%20100721%20CID_eb103a9e15359075f72a85f7ff534c79&utm_source=CampaignMonitorEmail&utm_term=Want%20to%20Pick%20the%20Best%20Stocks%20Pick%20the%20Happiest%20Companies)

<sup>7</sup> <https://www.salesforce.com/company/equality/>

<sup>8</sup> <https://www.salesforce.com/news/stories/our-2020-annual-equality-update/>

Between September 2020 and September 2021, the number of S&P 100 companies releasing recruitment rate data by gender, race, and ethnicity increased by 234 percent; companies releasing retention rate data increased by 79 percent; and companies releasing promotion rate data increased by 379 percent.

Other technology companies release or have committed to release more data on the retention and promotion effectiveness of their human capital management programs than Salesforce does. These include: Intel, Microsoft, NVIDIA, Splunk and Twilio.

**EXHIBIT B**

**From:** [Twu, Victor](#)  
**To:** [Meredith Benton](#)  
**Cc:** [Andrew Behar](#); [Shareholder Engagement](#); [Mueller, Ronald O.](#)  
**Subject:** salesforce.com, inc. Deficiency Notices (AYS)  
**Date:** Tuesday, January 11, 2022 3:34:41 PM  
**Attachments:** [salesforce.com, inc. Deficiency Notice \(AYS-JZD Investments\).pdf](#)  
[salesforce.com, inc. Deficiency Notice \(AYS-Raphael\).pdf](#)  
[salesforce.com, inc. Deficiency Notice \(AYS-Clark Trust\).pdf](#)

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Ms. Benton –

On behalf of salesforce.com, inc., attached please find correspondence regarding the stockholder proposal submitted by As You Sow on behalf of JZD Investments LLC, Catherine Raphael, and the Hilary Perry Clark Rev Trust. Paper copies of these correspondence is being delivered to you via UPS as well.

We would appreciate you kindly confirming receipt of these correspondence.

Best,  
Victor

**Victor Twu**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
3161 Michelson Drive, Irvine, CA 92612-4412  
Tel +1 949.451.3870 • Fax +1 949.475.4787  
[VTwu@gibsondunn.com](mailto:VTwu@gibsondunn.com) • [www.gibsondunn.com](http://www.gibsondunn.com)

January 11, 2022

**VIA OVERNIGHT MAIL AND EMAIL**

Meredith Benton  
Whistle Stop Capital  
28 Glenville Road  
Greenwich, CT 06831  
[REDACTED]

Dear Ms. Benton:

I am writing on behalf of salesforce.com, inc. (the “**Company**”), which received on December 28, 2021, the stockholder proposal relating to a diversity, equity and inclusion report that we believe was submitted on December 27, 2021 (the “**Submission Date**”) by As You Sow on behalf of JZD Investments LLC (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Stockholders (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

**1. Authorization of a Representative**

As You Sow’s correspondence did not include sufficient documentation demonstrating that it had been authorized as the stockholder’s representative to submit the Proposal on behalf of the Proponent as of the Submission Date. Rule 14a-8(b)(1)(iv) under the Securities Exchange Act of 1934, as amended, requires any stockholder who submits a proposal by proxy to provide written documentation that:

- identifies the company to which the proposal is directed;
- identifies the annual or special meeting for which the proposal is submitted;
- identifies the stockholder as the proponent and identifies the person acting on the stockholder’s behalf as the stockholder’s representative;
- includes the stockholder’s statement authorizing the designated representative to submit the proposal and otherwise act on the stockholder’s behalf;
- identifies the specific topic of the proposal to be submitted;
- includes the statement supporting the proposal; and
- is signed and dated by the stockholder.

We believe the documentation that As You Sow provided is insufficient because the November 29, 2021 letter from Shari Behnke purporting to act on behalf of the Proponent to

authorize As You Sow to act as the Proponent's representative (the "**November Letter**") does not make apparent, and nor is it self-evident, that Ms. Behnke is authorized to sign on behalf of the Proponent. In this regard, we note that Ms. Behnke is identified as a "Trustee" of the Proponent; however, the Proponent's corporate form appears to be that of a limited liability company rather than a trust. To remedy this defect, the Proponent must provide additional documentation that makes apparent Ms. Behnke's authority to act on behalf of the Proponent. In the alternative, new documentation that contains the information specified above may be provided.

## 2. Proof of Continuous Ownership

To the extent that the Proponent authorized As You Sow to submit the Proposal to the Company, please note the following. Rule 14a-8(b) under the Exchange Act provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company's shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that the Proponent has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date (each an "**Ownership Requirement**," and collectively, the "**Ownership Requirements**").

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received adequate proof that the Proponent has satisfied any of the Ownership Requirements. We are in receipt of email correspondence dated December 17, 2021 from Whistle Stop Capital providing a December 8, 2021 letter addressed to Catherine Raphael from Fidelity Investments (the "**Fidelity Letter**") reporting on ownership of the Company's shares. In our view, the Fidelity Letter does not verify the Proponent's continuous ownership of the requisite amount of Company shares as it relates to the Proposal. Specifically, the Fidelity Letter does not clearly identify the shareholder whose ownership it is addressing and does not verify continuous ownership as of the Submission Date for any of the time periods set forth in any of the Ownership Requirements described above.



To remedy this defect, the Proponent must obtain a new proof of ownership letter verifying that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, 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 Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the “record” holder of the Proponent’s shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent’s broker or bank is a DTC participant by asking the Proponent’s broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent’s broker or bank. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on the account

Meredith Benton  
January 11, 2022  
Page 4

statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

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 Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington DC 20036. Alternatively, you may transmit any response by email to me at [RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com). Please note that the SEC Staff has advised that you are responsible for confirming our receipt of any correspondence you transmit in response to this letter.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Andrew Behar, As You Sow  
Shari Behnke, JZD Investments LLC

Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L

The copies of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L provided to JZD have been omitted pursuant to the announcement by the Staff requesting companies to omit all correspondence not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021). We are happy to provide the omitted attachments at the Staff's request.

January 11, 2022

**VIA OVERNIGHT MAIL AND EMAIL**

Meredith Benton  
Whistle Stop Capital  
28 Glenville Road  
Greenwich, CT 06831  
[REDACTED]

Dear Ms. Benton:

I am writing on behalf of salesforce.com, inc. (the “**Company**”), which received on December 28, 2021, the stockholder proposal relating to a diversity, equity and inclusion report that we believe was submitted on December 27, 2021 (the “**Submission Date**”) by As You Sow on behalf of Catherine Raphael pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Stockholders (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention.

**1. Proof of Continuous Ownership**

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that Ms. Raphael demonstrate that she has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company’s shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that Ms. Raphael has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the

Submission Date (each an **“Ownership Requirement,”** and collectively, the **“Ownership Requirements”**).

The Company’s stock records do not indicate that Ms. Raphael is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received adequate proof that Ms. Raphael has satisfied any of the Ownership Requirements. In connection with a different proposal submitted on behalf of Ms. Raphael, we received email correspondence dated December 17, 2021 from Whistle Stop Capital (**“Whistle Stop”**) providing a December 8, 2021 letter addressed to Ms. Raphael from Fidelity Investments (the **“Fidelity Letter”**) reporting on ownership of the Company’s shares. In our view, the Fidelity Letter does not verify Ms. Raphael’s continuous ownership of the requisite amount of Company shares as it relates to the Proposal and with respect to the Submission Date. Specifically, the Fidelity Letter states that as of December 8, 2021, Fidelity Investments held the requisite amount of Company shares since before January 4, 2020 on behalf of an entity called **“JZD INVESTMENTS LLC”** (**“JZD Investments”**). Although it also states that **“the CATHERINE RAPHAEL”** has beneficial ownership of at least \$2,000 of such shares since January 4, 2020, the Fidelity Letter does not indicate that Ms. Raphael is the stockholder of the shares held for JZD Investments (as opposed, for example, to merely having a contractual right to share voting power over the shares, which is a form of **“beneficial ownership”**) and we have not been provided with any documentation demonstrating a relationship between Ms. Raphael and JZD Investments that results in Ms. Raphael being the stockholder of shares held for JZD Investments. In addition, the Fidelity Letter states with respect to Ms. Raphael’s beneficial ownership that **“such beneficial ownership has since before January 4, 2020”** but does not affirmatively confirm that she has owned the requisite amount of Company shares **“continuously”** and that such ownership has continued through the Submission Date.

To remedy this defect, Ms. Raphael must obtain a new proof of ownership letter verifying that she has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the **“record”** holder of Ms. Raphael’s shares (usually a broker or a bank) verifying that, at the time the Proposal was submitted (the Submission Date), Ms. Raphael continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if Ms. Raphael was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that she met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that Ms. Raphael continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If Ms. Raphael intends to demonstrate ownership by submitting a written statement from the “record” holder of her shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether Ms. Raphael’s broker or bank is a DTC participant by asking her broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If Ms. Raphael’s broker or bank is a DTC participant, then Ms. Raphael needs to submit a written statement from her broker or bank verifying that she continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If Ms. Raphael’s broker or bank is not a DTC participant, then Ms. Raphael needs to submit proof of ownership from the DTC participant through which the shares are held verifying that she continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking Ms. Raphael’s broker or bank. If Ms. Raphael’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through Ms. Raphael’s account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds Ms. Raphael’s shares is not able to confirm her individual holdings but is able to confirm the holdings of Ms. Raphael’s broker or bank, then Ms. Raphael needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that Ms. Raphael’s continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from Ms. Raphael’s broker or bank confirming her ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

## **2. Multiple Proposals**

Pursuant to Rule 14a-8(c) under the Exchange Act, a person may submit no more than one proposal, directly or indirectly, to a company for a particular stockholders’ meeting. The Proposal is the second stockholder proposal for which Ms. Raphael has been designated as a co-filer. On December 6, 2021, Whistle Stop submitted to the Company on behalf of Ms. Raphael a stockholder proposal relating to a report on risks of concealment clause use and discrimination. This deficiency can be corrected by indicating which proposal Ms. Raphael would like to submit and which proposal she would like to withdraw.

Meredith Benton  
January 11, 2022  
Page 4

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 Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington DC 20036. Alternatively, you may transmit any response by email to me at [RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com). Please note that the SEC Staff has advised that you are responsible for confirming our receipt of any correspondence you transmit in response to this letter.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ronald O. Mueller", is placed over a light blue rectangular background.

Ronald O. Mueller

Enclosures

cc: Andrew Behar, As You Sow  
Catherine Raphael


Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L

The copies of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L provided to Raphael have been omitted pursuant to the announcement by the Staff requesting companies to omit all correspondence not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021). We are happy to provide the omitted attachments at the Staff's request.



January 11, 2022

**VIA OVERNIGHT MAIL AND EMAIL**

Meredith Benton  
Whistle Stop Capital  
28 Glenville Road  
Greenwich, CT 06831  


Dear Ms. Benton:

I am writing on behalf of salesforce.com, inc. (the “**Company**”), which received on December 28, 2021, the stockholder proposal relating to a diversity, equity and inclusion report that we believe was submitted on December 27, 2021 (the “**Submission Date**”) by As You Sow on behalf of the Hilary Perry Clark Rev Trust (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 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 a stockholder proponent must submit sufficient proof of its continuous ownership of company shares. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company’s shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that the Proponent has continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date we have not received proof that the Proponent has satisfied any of the Ownership Requirements.

To remedy this defect, the Proponent must submit sufficient proof that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the "record" holder of the Proponent's shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, 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 Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker

Meredith Benton  
January 11, 2022  
Page 3

or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's shares is not able to confirm the Proponent's individual holdings but is able to confirm the holdings of the Proponent's broker or bank, then the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from the Proponent's broker or bank confirming the Proponent's ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership.

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 Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington DC 20036. Alternatively, you may transmit any response by email to me at [RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com). Please note that the SEC Staff has advised that you are responsible for confirming our receipt of any correspondence you transmit in response to this letter.

If you have any questions with respect to the foregoing, please contact me at (202) 955-8671. For your reference, I enclose a copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Andrew Behar, As You Sow  
Hilary Perry Clark, Hilary Perry Clark Rev Trust

Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L

The copies of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L provided to the Clark Trust have been omitted pursuant to the announcement by the Staff requesting companies to omit all correspondence not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* <https://www.sec.gov/corpfina/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021). We are happy to provide the omitted attachments at the Staff's request.

**EXHIBIT C**

**From:** UPS <pkginfo@ups.com>  
**Sent:** Wednesday, January 12, 2022 8:08 AM  
**To:** Twu, Victor <VTwu@gibsondunn.com>  
**Subject:** UPS Delivery Notification, Tracking Number 1Z975463NT94701699

[WARNING: External Email]



**Hello, your package has been delivered.**

**Delivery Date:** Wednesday, 01/12/2022

**Delivery Time:** 11:06 AM

**Left At:** FRONT DOOR

[Set Delivery Instructions](#)

[Manage Preferences](#)

[View My Packages](#)

## GIBSON DUNN AND CRUTCHER

<b>Tracking Number:</b>	<a href="#">1Z975463NT94701699</a>
<b>Ship To:</b>	WHISTLE STOP CAPITAL 28 GLENVILLE ROAD GREENWICH, CT 068315332 US
<b>Number of Packages:</b>	1
<b>UPS Service:</b>	UPS Next Day Air®
<b>Package Weight:</b>	0.0 LBS
<b>Reference Number:</b>	90768-00002
<b>Reference Number:</b>	V. TWU



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[Review the UPS Privacy Notice](#)

[Review the UPS My Choice Service Terms](#)

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below

**Tracking Number**

1Z975463NT94701699

**Service**

UPS Next Day Air®

**Shipped / Billed On**

01/11/2022

**Delivered On**

01/12/2022 11:06 A.M.

**Delivered To**

GREENWICH, CT, US

**Received By**

DRIVER RELEASE

**Left At**

Front Door

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS 02/03/2022 4:41 PM EST



**From:** Shareholder Engagement [REDACTED]  
**Sent:** Tuesday, January 11, 2022 2:28 PM  
**To:** Twu, Victor <VTwu@gibsondunn.com>  
**Cc:** Andrew Behar [REDACTED]; Mueller, Ronald O. <RMueller@gibsondunn.com>; Rachel Lowy [REDACTED]; Meredith Benton [REDACTED]  
**Subject:** Re: salesforce.com, inc. Deficiency Notices (AYS)

**[WARNING: External Email]**

Mr. Twu-

Confirming receipt of these deficiency letters as of today, Tuesday 1/11/22.

Proofs of ownership have been requested from the shareholders' custodians, and will be forwarded on to you as soon as we receive them.

They will be forwarded to you no later than Tuesday 1/25/22.

Best-

Gail

**Gail Follansbee (she/her)**  
**Manager, Shareholder Relations**

**As You Sow**

2020 Milvia Street, Suite 500

Berkeley, CA 94704

[REDACTED] | [www.asyousow.org](http://www.asyousow.org)

From: UPS <pkginfo@ups.com>  
Sent: Wednesday, January 12, 2022 10:02 AM  
To: Twu, Victor <VTwu@gibsondunn.com>  
Subject: UPS Delivery Notification, Tracking Number 1Z975463NT94247305

[WARNING: External Email]



**Hello, your package has been delivered.**

**Delivery Date:** Wednesday, 01/12/2022

**Delivery Time:** 9:59 AM

**Left At:** RECEPTION

**Signed by:** GARZA

## GIBSON DUNN AND CRUTCHER

<b>Tracking Number:</b>	<a href="#">1Z975463NT94247305</a>
<b>Ship To:</b>	AS YOU SOW 2020 MILVIA STREET SUITE 500 BERKELEY, CA 947041298 US
<b>Number of Packages:</b>	1
<b>UPS Service:</b>	UPS Next Day Air®
<b>Package Weight:</b>	0.0 LBS
<b>Reference Number:</b>	90768-00002
<b>Reference Number:</b>	V. TWU



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[For Questions, Visit Our Help and Support Center](#)

# Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below

**Tracking Number**

1Z975463NT94247305

**Service**

UPS Next Day Air®

**Shipped / Billed On**

01/11/2022

**Delivered On**

01/12/2022 9:59 A.M.

**Delivered To**

BERKELEY, CA, US

**Received By**

GARZA

**Left At**

Reception

Thank you for giving us this opportunity to serve you. Details are only available for shipments delivered within the last 120 days. Please print for your records if you require this information after 120 days.

Sincerely,

UPS

Tracking results provided by UPS 02/03/2022 4:41 PM EST

**EXHIBIT D**

**From:** [Shareholder Engagement](#)  
**To:** [Twu, Victor](#)  
**Cc:** [Andrew Behar](#); [Mueller, Ronald O.](#); [Rachel Lowy](#); [Meredith Benton](#); [Danielle Fugere](#)  
**Subject:** Re: salesforce.com, inc. Deficiency Notices (AYS)  
**Date:** Thursday, January 27, 2022 2:42:37 PM  
**Attachments:** [image.png](#)  
[22.CRM.1 Salesforce Proof of Ownership - JZD.pdf](#)  
[22.CRM.1 Salesforce Proof of Ownership - Catherine Raphael.pdf](#)  
[22.CRM.1 Salesforce Proof of Ownership - Hilary Perry Clark.pdf](#)

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**[WARNING: External Email]**

Mr. Twu,

Please see the attached revised proof of ownerships:

Proponent	<b>JZD Investments LLC</b>	70 shares
Co-filer	<b>Catherine Raphael</b>	47 shares
Co-filer	<b>Hilary Perry Clark Rev Trust</b>	38 shares

These proof of ownership letters were received on **1/12/2022**. Please confirm receipt, that you will accept these letters, and that all deficiencies have now been satisfied.

Thank you,  
Rachel Lowy

**Rachel Lowy** (she/her/hers)

**Shareholder Relations Coordinator**

**As You Sow**

Main Post Office, P.O. Box 751 | Berkeley, CA 94701



| [www.asyousow.org](http://www.asyousow.org)



---



Fidelity Institutional<sup>SM</sup>

100 Crosby Parkway KCIJ  
Covington, KY 41015  
January 03, 2022

JZD INVESTMENTS LLC

[REDACTED]  
[REDACTED]

To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the JZD INVESTMENTS LLC. As of the date of this letter, Fidelity Investments held the following positions since before January 4, 2020 to present on behalf of JZD INVESTMENTS LLC:

CRM: Salesforce.com INC – CUSIP: 79466L302 – 70 Shares

We confirmed that the JZD INVESTMENTS LLC has beneficial ownership of at least \$2,000.00 in market value of voting securities on the securities listed above and had such beneficial ownership continuously since before January 4, 2020 in accordance with rule 14a-8(a)(a) of Securities Act of 1934.

If you have any questions, please contact your advisor at Aperio Group, LLC. at [REDACTED]  
[REDACTED]

Sincerely,

A handwritten signature in black ink, appearing to read "Brandon Pitts".

Brandon Pitts  
Client Services Manager

Our file: W223535-03JAN22

200 Seaport Boulevard, Boston, MA 02210

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981775.1.0



Fidelity Institutional<sup>SM</sup>

100 Crosby Parkway KCIJ  
Covington, KY 41015  
January 03, 2022

CATHERINE RAPHAEL  
CATHERINE RAPHAEL

[REDACTED]  
[REDACTED]

To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the CATHERINE RAPHAEL. As of the date of this letter, Fidelity Investments held the following positions since before January 4, 2020 to present on behalf of CATHERINE RAPHAEL:

CRM: Salesforce.com INC – CUSIP: 79466L302 – 47 Shares

We confirmed that the CATHERINE RAPHAEL has beneficial ownership of at least \$2,000.00 in market value of voting securities on the securities listed above and had such beneficial ownership continuously since before January 4, 2020 in accordance with rule 14a-8(a)(a) of Securities Act of 1934.

If you have any questions, please contact your advisor at Aperio Group, LLC. at [REDACTED]  
[REDACTED]

A handwritten signature in black ink, appearing to read "Brandon Pitts".

Sincerely,

Brandon Pitts  
Client Services Manager

Our file: W226111-03JAN22

200 Seaport Boulevard, Boston, MA 02210

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981775.1.0





Fidelity Institutional<sup>SM</sup>

100 Crosby Parkway KCIJ  
Covington, KY 41015  
January 03, 2022

HILARY P CLARK  
HILARY PERRY CLARK REVOCABLE TRUST

[REDACTED]  
[REDACTED]

To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the HILARY PERRY CLARK REV TRUST. As of the date of this letter, 2021, Fidelity Investments held the following positions since before January 4, 2020 to present on behalf HILARY PERRY CLARK REV TRUST:

CRM: Salesforce.com INC – CUSIP: 79466L302 – 38 Shares

We confirmed that the HILARY PERRY CLARK REV TRUST has beneficial ownership of at least \$2,000.00 in market value of voting securities on the securities listed above and had such beneficial ownership continuously since before January 4, 2020 in accordance with rule 14a-8(a)(a) of Securities Act of 1934.

If you have any questions, please contact your advisor at Aperio Group, LLC. at [REDACTED]  
[REDACTED]

Sincerely,

Brandon Pitts  
Client Services Manager

Our file: W225220-03JAN22

200 Seaport Boulevard, Boston, MA 02210

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981775.1.0

**EXHIBIT E**

November 22, 2021

Sarah Dods  
Secretary  
Salesforce.com Inc.  
415 Mission Street, 3rd Floor  
San Francisco, California 94105

Attn: Corporate Secretary

Dear Ms. Dods,

Whistle Stop Capital is filing a shareholder proposal on behalf of Catherine Raphael (S) (“Proponent”), a shareholder of Salesforce.com Inc., for inclusion in the 2022 proxy statement for Salesforce.com Inc. and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. The Proponent should be considered the lead filer of this resolution.

A letter from the Proponent authorizing Whistle Stop Capital to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

The dates/times that the Proponent is available to meet with the company regarding this shareholder proposal are:

- December 24th, 11am-12pm PT
- December 24th, 12pm-1pm PT

To schedule a dialogue, please contact me at [REDACTED]

Sincerely,



Meredith Benton  
Principal/Founder  
Whistle Stop Capital

Enclosures: Shareholder Proposal, Shareholder Authorization

11/9/2021 | 8:21:17 AM PST

Meredith Benton  
Principal/Founder  
Whistle Stop Capital  
28 Glenville Road  
Greenwich, CT 06831

**Re: Authorization to File Shareholder Resolution**

Dear Meredith Benton,

The undersigned (“Stockholder”) authorizes Whistle Stop Capital to file or co-file a shareholder resolution on Stockholder’s behalf with the named Company for inclusion in the Company’s 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934. The resolution at issue relates to the below described subject.

Stockholder: Catherine Raphael (S)  
Company: Salesforce  
Subject: Report on risks of Concealment Clause Use and Discrimination

The Stockholder has continuously owned an amount of Company stock for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of stock through the date of the Company’s annual meeting in 2022.

The Stockholder gives Whistle Stop Capital the authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, and designating another entity as lead filer and representative of the shareholder. The Stockholder understands that the Stockholder’s name and contact information will be disclosed in the proposal. The Securities and Exchange Commission has confirmed that they remove personally identifiable information from No-Action requests and related correspondence before making these materials publicly available on the Commission’s website. The Stockholder acknowledges that their name, however, may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.

The Stockholder is available for a meeting with the Company regarding this shareholder proposal. The dates/times will be provided by Whistle Stop Capital.

The Stockholder can be contacted at the following email address to schedule a dialogue during one of the above dates: [REDACTED]

Any correspondence regarding meeting dates must **also be sent to my representative:**

[REDACTED]

The Stockholder also authorizes Whistle Stop Capital to send a letter of support of the resolution on Stockholder's behalf.

Sincerely,

DocuSigned by:  
*Catherine Raphael*  
29EB720C3306423...

Name: Catherine Raphael

Title: MS.

**RESOLVED:**

Shareholders of Salesforce.com Inc. (“Salesforce”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

**SUPPORTING STATEMENT:**

Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Salesforce asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

**WHEREAS:**

Salesforce wisely uses concealment clauses in employment agreements to protect corporate information, such as intellectual capital and trade secrets. However, harassment, discrimination are not trade secrets, nor are they core to Salesforce’s operations or needed for competitive reasons. Yet, Salesforce's employment agreements may prohibit their workers from speaking openly on these topics. Given this, investors cannot be confident in their knowledge of Salesforce's workplace culture.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.<sup>1</sup> A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percentage points higher than the 20 least diverse companies.<sup>2</sup>

In contrast, a workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent.<sup>3</sup> Employees who engage in harmful behavior may also be shielded from accountability.

Pinterest paid \$22.5 million to settle a gender discrimination lawsuit brought by a former executive after years of binding employees who settled discrimination claims to concealment agreements. Shareholders ultimately sued Pinterest executives alleging a breach of fiduciary duty by “perpetrating or knowingly ignoring the long-standing and systemic culture of discrimination and retaliation.”<sup>4</sup> Similarly, in 2020, Alphabet agreed to limit confidentiality restrictions associated with harassment and discrimination cases

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<sup>1</sup><https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

<sup>2</sup> <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

<sup>3</sup> [https://conference.iza.org/conference\\_files/LaborMarkets\\_2021/sockin\\_j28322.pdf](https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf)

<sup>4</sup><https://www.institutionalinvestor.com/article/b1phvnsfffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

as part of a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment.<sup>5</sup>

In 2018, Salesforce faced allegations of racial discrimination.<sup>6</sup> Media reports also suggest Salesforce's toxic workplace culture doesn't align with its public display of dedication to its diversity and inclusion efforts.<sup>7</sup> Investors seek assurance that more missteps are not occurring at Salesforce, hidden from view because of concealment clauses.

California law prohibits concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity.<sup>8</sup> Salesforce works under a patchwork of state laws related to the use of concealment clauses and may benefit from consistent practices across all employees and contractors.

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<sup>5</sup> <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

<sup>6</sup> [Anderson v. Salesforce.com, Inc., Case No. 18-cv-06712-PJH | Casetext Search + Citator](#)

<sup>7</sup> <https://www.protocol.com/enterprise/salesforces-benioff-diversity-inclusion-woes>

<sup>8</sup> <https://www.marketwatch.com/story/silenced-no-more-act-becomes-law-in-california-crippling-ndas-11633705395>

**EXHIBIT F**



**From:** Twu, Victor

**Sent:** Friday, December 31, 2021 12:12 PM

**To:** [REDACTED]

**Cc:** Meredith Benton [REDACTED]; Mueller, Ronald O. <RMueller@gibsondunn.com>

**Subject:** salesforce.com, inc. 2nd Deficiency Notice (Raphael)

Ms. Raphael –

On behalf of salesforce.com, inc., attached please find follow-up correspondence regarding the shareholder submitted by Whistle Stop Capital on your behalf.

We would appreciate you kindly confirming receipt of this correspondence.

Best,  
Victor

**Victor Twu**

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
3161 Michelson Drive, Irvine, CA 92612-4412  
Tel +1 949.451.3870 • Fax +1 949.475.4787  
VTwu@gibsondunn.com • www.gibsondunn.com

December 31, 2021

**VIA EMAIL**

Catherine Raphael  


Dear Ms. Raphael:

I am writing on behalf of Salesforce.com Inc. (the “**Company**”), which received on November 29, 2021, the stockholder proposal relating to concealment clauses submitted on November 24, 2021 (the “**Submission Date**”) by Whistle Stop Capital (“**Whistle Stop**”) purportedly on your behalf pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 for inclusion in the proxy statement for the Company’s 2022 Annual Meeting of Stockholders (the “**Proposal**”). In our letter to you dated December 13, 2021 (the “**Prior Deficiency Notice**”), we informed you of certain deficiencies regarding your submission and provided information on how to remedy the deficiency. We are in receipt of the email correspondence dated December 17, 2021 from Whistle Stop (the “**December 17 Email**”) providing a December 8, 2021 letter addressed to you from Fidelity Investments (the “**Fidelity Letter**”) reporting on ownership of the Company’s shares.

In our view, the Fidelity Letter does not verify your continuous ownership of the requisite amount of Company shares. Specifically, the Fidelity Letter states that as of the Submission Date it held the requisite amount of Company shares since before January 4, 2020 on behalf of an entity called “JZD INVESTMENTS LLC” (“**JZD Investments**”). Although it also states that “the CATHERINE RAPHAEL” has beneficial ownership of at least \$2,000 of such shares since January 4, 2020, the Fidelity Letter does not indicate that you are the stockholder of the shares held for JZD Investments (as opposed, for example, to merely having a contractual right to share voting power over the shares, which is a form of “beneficial ownership”) and we have not been provided with any documentation demonstrating a relationship between you and JZD Investments that results in you being the stockholder of shares held for JZD Investments. In addition, the Fidelity Letter states with respect to your beneficial ownership that “such beneficial ownership has since before January 4, 2020” but does not affirmatively confirm that you have owned the requisite amount of Company shares “continuously” and does not state that you held such shares as of the Submission Date.

Catherine Raphael  
December 31, 2021  
Page 2

## 1. Proof of Continuous Ownership

As we explained in the Prior Deficiency Notice, Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a stockholder proponent must submit sufficient proof demonstrating that you have continuously owned at least:

- (1) \$2,000 in market value of the Company's shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company's shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
- (3) \$25,000 in market value of the Company's shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date; or
- (4) \$2,000 of the Company's shares entitled to vote on the Proposal for at least one year as of January 4, 2021, and that you have continuously maintained a minimum investment amount of at least \$2,000 of such shares from January 4, 2021 through the Submission Date (each an "**Ownership Requirement**," and collectively, the "**Ownership Requirements**").

To remedy the defects described above, and as we explained in the Prior Deficiency Notice, you must provide sufficient documentation that you have continuously owned sufficient Company shares to satisfy at least one of the Ownership Requirements. Sufficient documentation would consist of evidence that you are in fact the stockholder of the Company shares held in the name of JZD Investments or, as explained in the Prior Deficiency Notice, either:

- (1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that, at the time you submitted the Proposal (the Submission Date), you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if you were required to and 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, demonstrating that you met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

Catherine Raphael  
December 31, 2021  
Page 3

If you intend to demonstrate ownership by submitting a written statement from the “record” holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that you continuously held Company shares satisfying at least one of the Ownership Requirements above: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

We ask 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 Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington DC

Catherine Raphael  
December 31, 2021  
Page 4

20036. Alternatively, you may transmit any response by email to me at [RMueller@gibsondunn.com](mailto:RMueller@gibsondunn.com).

## 2. Multiple Proposal Deficiency

Separately, we note that both you and JZD Investments, acting through As You Sow as a representative, have submitted a proposal to the Company regarding “Greater Disclosure of Material Corporate Diversity, Equity and Inclusion Data” (the “**AYS Submission**”). As a result, you appear to violate Rule 14a-8(c) under the Securities Exchange Act of 1934, as amended, which provides that each person may submit no more than one proposal, directly or indirectly, to a company for a particular stockholders’ meeting. We will separately send you a letter with respect to the Rule 14a-8(c) and other deficiencies regarding the AYS Submission.

If you have any questions with respect to the foregoing, please contact me at (202) 955 8671. For your reference, I enclose another copy of Rule 14a-8 as amended for meetings that occur on or after January 1, 2022 but before January 1, 2023, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Meredith Benton, Whistle Stop Capital

Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L

The copies of Rule 14a-8, Staff Legal Bulletin No. 14F, and Staff Legal Bulletin No. 14L provided to Raphael have been omitted pursuant to the announcement by the Staff requesting companies to omit all correspondence not directly relevant to this no-action request. *See* Announcement Regarding Personally Identifiable and Other Sensitive Information in Rule 14a-8 Submissions and Related Materials, *available at* <https://www.sec.gov/corpfin/announcement/announcement-14a-8-submissions-pii-20211217> (last updated Dec. 17, 2021). We are happy to provide the omitted attachments at the Staff's request.

**From:** Jaylen Spann [REDACTED]  
**Sent:** Wednesday, January 19, 2022 11:10 AM  
**To:** Twu, Victor <VTwu@gibsondunn.com>; shareholderproposals@sec.gov; Mueller, Ronald O. <RMueller@gibsondunn.com>  
**Cc:** Meredith Benton [REDACTED] >  
**Subject:** Corrected proof of ownership for lead filer Catherine Raphael

**[WARNING: External Email]**

Hi Victor,

Please find attached a copy of an updated proof of ownership form for the lead filer of the Salesforce proposal, Catherine Raphael.

Please provide proof of receipt of the attached and let us know if there is anything else needed.

Best,

--

Jaylen Spann, Research & Development Associate

Whistle Stop Capital, LLC

[REDACTED]

[REDACTED]

whistlestop.capital

Whistle Stop Capital, LLC, is a consultancy that works with asset owners and advisors to assess and address material social and environmental exposures within their investment portfolios.



Fidelity Institutional<sup>SM</sup>

100 Crosby Parkway KCIJ  
Covington, KY 41015  
January 03, 2022

CATHERINE RAPHAEL  
CATHERINE RAPHAEL

[REDACTED]  
[REDACTED]

To Whom It May Concern:

Fidelity Investments, a DTC participant, acts as the custodian for the CATHERINE RAPHAEL. As of the date of this letter, Fidelity Investments held the following positions since before January 4, 2020 to present on behalf of CATHERINE RAPHAEL:

CRM: Salesforce.com INC – CUSIP: 79466L302 – 47 Shares

We confirmed that the CATHERINE RAPHAEL has beneficial ownership of at least \$2,000.00 in market value of voting securities on the securities listed above and had such beneficial ownership continuously since before January 4, 2020 in accordance with rule 14a-8(a)(a) of Securities Act of 1934.

If you have any questions, please contact your advisor at Aperio Group, LLC. at [REDACTED]  
[REDACTED]

A handwritten signature in black ink, appearing to read "Brandon Pitts".

Sincerely,

Brandon Pitts  
Client Services Manager

Our file: W226111-03JAN22

200 Seaport Boulevard, Boston, MA 02210

Fidelity Clearing & Custody Solutions<sup>®</sup> provides clearing, custody, or other brokerage services through National Financial Services LLC or Fidelity Brokerage Services LLC, Members NYSE, SIPC.

981775.1.0



**EXHIBIT G**

## Racial Equity Audit

**RESOLVED:** Shareholders of Salesforce.com, Inc. (“Salesforce”) request that the Board of Directors commission a racial equity audit conducted by an independent third-party with input from civil rights organizations, employees, communities in which Salesforce operates, and stakeholders that will analyze Salesforce’s impacts on civil rights, equity, diversity and inclusion, and impacts of those issues on Salesforce’s business. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information and information that could be construed as an admission in pending litigation, should be publicly disclosed on Salesforce’s website.

### **Supporting Statement**

The ongoing racial justice and equity movement paired with disproportionate impacts of the coronavirus pandemic garnered attention from media and policymakers on systemic racism, racial violence, and societal inequities. Companies would benefit from assessing the risks of products, services, and overall corporate practices that are or are perceived to be discriminatory, racist, or increasing inequalities.

In February 2021, two Black women in prominent positions left Salesforce citing “rampant microaggressions and gaslighting”:<sup>1</sup>

- A manager resigned, claiming Salesforce lacks accountability regarding diversity, equity, and inclusion, and its “disingenuous marketing around equality” does not align with internal practices.<sup>2</sup> She alleged Salesforce lacks a proactive action plan to prevent underrepresented minorities from suffering “unchecked harm and trauma.”<sup>3</sup>
- A senior manager resigned, claiming she was “manipulated, bullied, [and] neglected.”<sup>4</sup> She asserted there is a “big gap from how Salesforce portrays itself and the lived experience,” citing Salesforce’s “toxic environment.”

Despite hiring a Chief Equality Officer in 2016,<sup>5</sup> Salesforce failed to meaningfully improve its U.S. workforce diversity for Latinx and Black employees:

- The percentage of Latinx and Black employees barely changed, going from 4% to 5.1%<sup>6</sup> and from 2% to 4.3%<sup>7</sup> from 2015-2021 respectively.
- Salesforce’s goal of “doubling” its “representation of Black leaders” and increasing its underrepresented minority leaders by 50% by 2023<sup>8</sup> would still leave Blacks vastly

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<sup>1</sup> <https://www.fastcompany.com/90608433/vivianne-castillo-leaves-salesforce-citing-rampant-microaggressions-and-gaslighting>

<sup>2</sup> [https://www.linkedin.com/posts/vccastillo\\_vivianne-castilloresignation-letter21521-activity-6770470033694035968-sWJR](https://www.linkedin.com/posts/vccastillo_vivianne-castilloresignation-letter21521-activity-6770470033694035968-sWJR)

<sup>3</sup> *Id.*

<sup>4</sup> <https://www.linkedin.com/posts/activity-6763264995485728768-aRii>

<sup>5</sup> <https://www.businessinsider.com/salesforce-push-to-improve-equality-yielded-slow-results-tony-prophet-2020-11>

<sup>6</sup> [https://www.salesforce.com/content/dam/web/en\\_us/www/assets/pdf/datasheets/sustainability-report-fy1516.pdf](https://www.salesforce.com/content/dam/web/en_us/www/assets/pdf/datasheets/sustainability-report-fy1516.pdf)

<sup>7</sup> <https://www.salesforce.com/news/stories/quarterly-equality-update-inclusive-employee-experience/>

<sup>8</sup> *Id.*

underrepresented considering that only 2.7% of Salesforce's leaders and managers were Black in 2020.<sup>9</sup>

- While Salesforce's goal of having 50% of its workforce consisting of "underrepresented groups" by 2023 is commendable, its decision to place all such groups (Women, Black, Latinx, Indigenous, Multiracial, LGBTQ+ employees, People with Disabilities, and Veterans<sup>10</sup>) into one broad category means certain groups could remain underrepresented at Salesforce.

Following controversies, Facebook and Starbucks conducted civil rights and equity audits that assisted in identifying, prioritizing, and implementing improvements. These efforts provide an emerging model for such audits, conducted by a third-party, in collaboration with experts in civil rights, and input from stakeholders.

We urge Salesforce to commission a racial equity audit of its policies, practices, products, and services to analyze the way Salesforce impacts civil rights, equity, diversity and inclusion and resulting impacts on Salesforce's business and employees.

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<sup>9</sup> [https://www.salesforce.com/content/dam/web/en\\_us/www/documents/reports/sfdc-certified-eeo-1-2021-report.pdf](https://www.salesforce.com/content/dam/web/en_us/www/documents/reports/sfdc-certified-eeo-1-2021-report.pdf)

<sup>10</sup> <https://www.salesforce.com/company/equality/>

March 10, 2022

VIA E-MAIL

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

Re: *salesforce.com, inc.*  
*Stockholder Proposal of JZD Investments LLC et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

In a letter dated February 4, 2022, we requested that the staff of the Division of Corporation Finance concur that our client, salesforce.com, inc. (the “Company”), could exclude from its proxy statement and form of proxy for its 2022 Annual Meeting of Stockholders a stockholder proposal (the “Proposal”) and statement in support thereof received from As You Sow on behalf of JZD Investments LLC, Catherine Raphael, and the Hilary Perry Clark Rev Trust (the “Proponents”).

Meredith Benton, acting on behalf of As You Sow as the representative of the Proponents, whom we have copied on this submission, has agreed to withdraw the Proposal. In reliance thereon, we hereby withdraw the February 4, 2022 no-action request relating to the Company’s ability to exclude the Proposal pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please do not hesitate to call me at (202) 955-8671 if you have any questions.

Sincerely,



Ronald O. Mueller

cc: Meredith Benton, Whistle Stop Capital  
Danielle Fugere, As You Sow  
Shareholder Engagement, As You Sow  
Sarah Dods, salesforce.com, inc.  
Scott Siamas, salesforce.com, inc.