



DIVISION OF
CORPORATION FINANCE

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

March 22, 2022

Seth Gottlieb
Cooley LLP

Re: Snowflake Inc. (the "Company")
Incoming letter dated March 21, 2022

Dear Mr. Gottlieb:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie and Myra K. Young (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponents have withdrawn the Proposal and that the Company therefore withdraws its February 7, 2022 request for a no-action letter from the Division.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: John Chevedden



February 7, 2022

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F. Street, N.E.
Washington, D.C. 20549
Via email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Snowflake Inc.

Ladies and Gentlemen:

On behalf of Snowflake Inc., a Delaware corporation (the "**Company**"), and in accordance with Rule 14a-8 ("**Rule 14a-8**") under the Securities Exchange Act of 1934, as amended, we are submitting this letter to notify the Securities and Exchange Commission (the "**Commission**") of the Company's intention to exclude from the proxy materials for its 2022 Annual Meeting of Stockholders (the "**2022 Proxy Materials**") a shareholder proposal (the "**Proposal**") submitted by James McRitchie and Myra K. Young (together, the "**Proponent**") on January 11, 2022. We also request confirmation that the staff of the Division of Corporation Finance (the "**Staff**") will not recommend enforcement action if, in reliance on Rule 14a-8, the Company omits the Proposal from its 2022 Proxy Materials for the reasons discussed below.

Pursuant to Rule 14a-8(j), this letter is being filed with the Commission no later than 80 days before the Company files its definitive 2022 Proxy Materials. Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008), question C, we have submitted this letter to the Commission via email to shareholderproposals@sec.gov in lieu of mailing paper copies.

Pursuant to Rule 14a-8(j), a copy of this submission is being sent simultaneously to the Proponent as notification of the Company's intention to omit the Proposal from its 2022 Proxy Materials. Likewise, we take this opportunity to inform the Proponent that if it elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be provided concurrently to the undersigned on behalf of the Company. This letter constitutes the Company's statement of the reasons that it deems the omission of the Proposal to be proper. We have been advised by the Company as to the factual matters set forth herein.

A copy of the Proposal and its accompanying cover letter is attached to this letter as Exhibit A.

The Proposal sets forth the following resolution:

Transition to Elect Directors by Majority Vote

Resolved, Shareholders of Snowflake Inc. ('Company') request the Board of Directors amend our Company's policies, articles of incorporation and/or bylaws to provide that director nominees be elected by the affirmative vote of the majority of votes cast, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. This proposal includes that a director who receives less than a majority vote be removed as soon as a replacement director can be qualified on an expedited basis. If such removed director has key experience, they can transition to a consultant or director emeritus. With written justification, the board can set an effective date several years into the future for these changes to take effect.

BASIS FOR EXCLUSION OF THE PROPOSAL

As discussed more fully below, the Company believes that it may omit the Proposal from its 2022 Proxy Materials in reliance on Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide, within 14 days of receipt of the Company's proper request, the requisite proof of continuous stock ownership.

Background

As shown in Exhibit A, the Company received the Proposal and related cover letter from the Proponent on January 11, 2022. The cover letter accompanying the Proposal states that the Proponent "pledge[d] to continue to hold the required amount of stock until after the date of [the annual shareholder] meeting." However, the Proponent did not include with the Proposal written verification of the Proponent's ownership of the requisite amount of the Company's common stock. After confirming the Proponent was not a registered owner of the Company's common stock, the Company informed the Proponent of the ownership deficiency in a letter emailed to the Proponent on January 14, 2022 (the "**Initial Deficiency Notice**"), which is attached to this letter as Exhibit B. The Initial Deficiency Notice was sent to the Proponent within 14 days of the date the Company received the Proposal. Among other things, the Initial Deficiency Notice notified the Proponent of the eligibility requirements of Rule 14a-8(b), informed the Proponent that they could remedy the ownership deficiency by providing the Company proof of the Proponent's ownership of a sufficient number of shares of the Company's common stock, and informed the Proponent that they must provide such proof of ownership to the Company within 14 days of receipt of the letter.

On both January 21, 2022 and January 23, 2022, and in each case in response to the Initial Deficiency Notice, the Proponent emailed a letter from TD Ameritrade to the Company purporting to evidence the requisite ownership, which is attached to this letter as Exhibit C (the "**Deficiency Response**"). The Deficiency Response did not indicate the precise number of shares of the Company's common stock held by the Proponent, and instead only provided that the Proponent, as of January 20, 2022, has "held since 12/15/20 and continue[s] to hold at least 10 class A common shares of Snowflake Inc (SNOW) in an account at TD Ameritrade."

Because the Proponent's Deficiency Response did not confirm whether the Proponent held sufficient shares of the Company's common stock for the Company to include the Proposal in the Company's 2022 Proxy Materials, as required by Rule 14a-8(b), the Company emailed an additional notice of deficiency (the "**Second Deficiency Notice**" and, together with the Initial Deficiency Notice, the "**Deficiency Notices**"), which is attached to this letter as Exhibit D, to the Proponent on January 26, 2022. The Second Deficiency Notice again set out the requirements under Rule 14a-8 for the Proponent to provide proof of the requisite ownership of the Company's common stock and how the Proponent could remedy the deficiency. However, as of the date of this letter, the Proponent has not responded to the Second Deficiency Notice or sent any documentation relating to the required proof of ownership of shares of the Company's common stock.

The Proposal may be excluded under Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent has failed to establish that they continuously held the requisite amount of the Company's securities entitled to be voted on the Proposal at the Company's 2022 Annual Meeting of Stockholders.

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1)(i) provides, in part, that to be eligible to submit a proposal for a company's annual meeting that is scheduled to be held on or after January 1, 2022, a proponent must have continuously held:

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

- At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
- At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year.

Alternatively, under Rule 14a-8(b)(3), if a shareholder proponent 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 shareholder proponent has continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the shareholder proposal is submitted to the company, the shareholder proponent may provide proof of meeting such ownership requirement.

Each of the ownership requirements set forth in Rule 14a-8(b) were described by the Company in the Deficiency Notices.

Staff Legal Bulletin No. 14 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). See Section C.1.c, Staff Legal Bulletin No. 14 (Jul. 13, 2001). 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 Staff Legal Bulletin No. 14F (Oct. 18, 2011). 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.

In this instance, the Company completed its initial public offering in September 2020 and, as a result, it is not possible for the Proponent to have held the Company's securities for at least one year as of January 4, 2021. Accordingly, the Proponent may not rely on Rule 14a-8(b)(3) when providing the requisite proof of ownership for submitting the Proposal since the Proponent is unable to comply with the holding period requirement set forth in Rule 14a-8(b)(3). As stated by the Proponent in its Deficiency Response, the Proponent has held the Company's common stock since December 15, 2020. Because the Proponent had not (and could not have) held the Company's securities for at least one year prior to the date set forth in Rule 14a-8(b)(3), or January 4, 2021, it is ineligible to rely on the ownership requirements set forth therein.

As a result, the Proponent must rely on Rule 14a-8(b)(1)(i) and show that it continuously owned at least \$25,000 of the Company's securities entitled to vote on the Proposal for at least one year. In the Deficiency Response, the Proponent indicated that it has held at least ten (10) shares of the Company's common stock. However, this number of shares is not enough to equal \$25,000 in market value of the Company's securities based on a per share price of \$405, which is the highest selling price of the Company's Class A common stock during the 60 calendar days prior to January 11, 2022. Accordingly, and as illustrated above, the Proponent has not provided proof of required ownership as of the date of this letter.

As established above, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent in a timely manner the Deficiency Notices, which specifically set forth the information and instructions for the Proponent to follow in order to cure the ownership deficiency described above. See Exhibits B and D herein. However, despite the clear explanation in the Deficiency Notices to provide the requisite documentary support, the Proponent failed to do so. As such, the Proposal may be excluded.

The Staff has consistently concurred with the exclusion of shareholder proposals based on a proponent's failure to provide satisfactory evidence of eligibility under Rule 14a-8(b) and Rule 14a-8(f)(1). See, e.g., *Cisco Systems, Inc.* (June 11, 2021) (concurring in exclusion of proposal pursuant to Rule 14a-8(f) where the proponent did not provide proof of ownership to satisfy the eligibility requirements within the time set forth in Rule 14a-8) and *NortonLifeLock Inc.* (May 7, 2021) (same); *Union Pacific Corporation* (Jan. 15, 2021) (same); *Exxon Mobil Corp.* (Feb. 13, 2017) (same).

Moreover, the Staff has taken the position on several occasions that a company may exclude a shareholder proposal where the proponent has failed to hold common stock for at least one year prior to the date of submission of its proposal given the timing of the company's initial public offering. See, e.g., *SeaWorld Entertainment, Inc.* (Mar. 10, 2014) (concurring that the proponent did not satisfy Rule 14a-8(b)'s one-year minimum ownership requirement, where the proponent purchased the company's common stock on the date of the company's initial public offering and submitted a shareholder proposal less than one year later) ("**SeaWorld**"); *Meridian Interstate Bancorp, Inc.* (June 17, 2008) (same) ("**Meridian**"); *Seagate Technology* (Aug. 11, 2003) (agreeing that Seagate could properly exclude the shareholder proposal under Rule 14a-8(b), where the proponent submitted his proposal four months after the company's initial public offering) ("**Seagate**").

The Company understands that *SeaWorld*, *Meridian* and *Seagate* related to instances where the Staff agreed with exclusion of shareholder proposals due to the inability of the proponents to own the requisite number of shares of company common stock for at least one-year as of the date of submission given the companies' initial public offering dates. The Company believes the current situation with the Proponent is analogous to *SeaWorld*, *Meridian* and *Seagate* because Rule 14a-8(b)(3) requires the Proponent to own the Company's securities for at least one year as of January 4, 2021. As exhibited throughout this letter, it is not possible for the Proponent to have held the Company's securities for at least one year as of January 4, 2021 due to the date of the Company's initial public offering. As a result, the Proponent must rely on Rule 14a-8(b)(1)(i) to provide its proof of ownership, which, as of the date of this letter, it has failed to do so.

Further, we note that Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("**SLB 14L**") suggests that "[the Staff takes] a plain meaning approach in interpreting the text of the proof of ownership letter, and we expect companies to apply a similar approach in their review of such letters." Here, it is clear based on a plain meaning approach in analyzing the information provided in the Proponent's Deficiency Response that the Proponent has failed to provide evidence that it has held at least \$25,000 in market value of the Company's securities entitled to vote on the proposal for at least one year as of the date of the Proposal, or January 11, 2022. As a result, the Proponent has failed to establish the requisite ownership eligibility under Rule 14a-8(b)(1)(i) to submit the Proposal for inclusion in the 2022 Proxy Materials.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

* * *

Based upon the foregoing analysis, we respectfully request the Staff concur that the Company may exclude the Proposal from the 2022 Proxy Materials and further requests confirmation that the Staff will not recommend enforcement action if the Company so omits the Proposal. Should the Staff disagree with the conclusions set forth in this letter, or should you require any additional information in support of our position, we would welcome the opportunity to discuss these matters with you as you prepare your response. Please note that the Company expects to mail the 2022 Proxy Materials to shareholders no later than May 27, 2022; consequently, the Company would appreciate it if the Staff could respond to this request by then. Please call the undersigned at (650) 843-5864 if you should have any questions or need additional information or as soon as a Staff response is available.

Respectfully yours,

A handwritten signature in black ink that reads "Seth Gottlieb". The signature is written in a cursive, slightly slanted style.

Seth Gottlieb

cc: Derk Lupinek, General Counsel, Snowflake Inc.
Travis Shrou, VP, Deputy General Counsel - Corporate, Snowflake Inc.
James McRitchie
Myra K. Young

Exhibit A

Shareholder Proposal and Cover Letter Dated January 11, 2022

Corporate Governance

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

Snowflake Inc
106 East Babcock Street, Suite 3A,
Bozeman, Montana 59715
Attention: Secretary
Via: [REDACTED]

Dear Derk Lupinek or current Corporate Secretary:

We are submitting the attached shareholder proposal, which we support, for a vote at the next annual shareholder meeting requesting uncontested directors be elected by majority vote. We pledge to continue to hold the required amount of stock until after the date of that meeting.

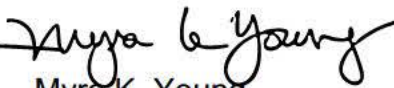
Our submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. We are available to meet with the Company's representative via phone on January 26, at 8:00am or 8:30pm Pacific or at a time that is mutually convenient.

This letter confirms that we are delegating John Chevedden to act as our agent regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting but not with regard to submission, negotiations or modification, which will require our approval. Please direct future communications regarding my rule 14a-8 proposal to John Chevedden (PH: [REDACTED], [REDACTED] at: [REDACTED] [REDACTED] to facilitate prompt communication.

You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED] That will prompt me to request the required letter from my broker and to submit it to you. **Per the most recent SEC SLB 14L <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."** Please honor our request to promptly acknowledge receipt of this email and attachment.

Sincerely,


James McRitchie


Myra K. Young

January 11, 2022

Date

cc: John Chevedden, [REDACTED]

[SNOW: Rule 14a-8 Proposal, January 11, 2022
[This line and any line above it – *Not* for publication.]



Proposal [4*] – Transition to Elect Directors by Majority Vote

Resolved: Shareholders of Snowflake Inc ('Company') request the Board of Directors amend our Company's policies, articles of incorporation and/or bylaws to provide that director nominees be elected by the affirmative vote of the majority of votes cast, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. This proposal includes that a director who receives less than a majority vote be removed as soon as a replacement director can be qualified on an expedited basis. If such a removed director has key experience, they can transition to a consultant or director emeritus. With written justification, the board can set an effective date several years into the future for these changes to take effect.

Supporting Statement: To provide shareholders a meaningful role in director elections, our Company's current director election standard should transition from a plurality vote standard to a majority vote standard when only board nominated candidates are on the ballot.

Under our Company's current voting system, a director can be elected if all shareholders oppose the director but one shareholder votes FOR, even by mistake. 90% of companies in the S&P 500 have adopted majority voting for uncontested elections.

In 2020 and 2021 majority shares voted FOR similar proposals at AeroVironment, Redfin, Vector Group, Axon Enterprise, Sonoco, TG Therapeutics, Lipocine, Abeona Therapeutics, Alico, Guidewire Software, Stemline Therapeutics, Caesars Entertainment, RadNet, Gannett, New Residential Investment, Safety Insurance Group, First Community Bancshares, Greenhill, and Advaxis.

Vanguard, one of our largest shareholders, wrote: "If the company has plurality voting, a fund will typically vote for shareholder proposals requiring majority vote for election of directors." BlackRock wrote: "Majority voting standards assist in ensuring that directors who are not broadly supported by shareholders are not elected to serve as their representatives." Many other large shareholders have similar proxy voting policies.

This request should be seen in the context that our Company does not allow shareholders to call special meeting or act by written consent, maintains supermajority requirements to amend certain governance provisions, does not provide shareholders with the right to proxy access, and requires a supermajority vote to amend various provisions. Our board is locked into an outdated governance structure that reduces accountability to shareholders, increasing the likelihood of stagnation. We should not risk *Zombies on Board: Investors Face the Walking Dead* (<https://www.msci.com/www/blog-posts/zombies-on-board-investors-face/02161045315>).

**To Enhance Shareholder Value, Vote FOR
Elect Directors by Majority Vote – Proposal [4*]**

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



The graphic included above is intended to be published with the rule 14a-8 proposal. It would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2022 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [16].

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

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

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

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

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

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

I also take this opportunity to remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. SLB 14L Section F, <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Exhibit B

Notice of Deficiency Dated January 14, 2022



January 14, 2022

BY EMAIL AND FEDERAL EXPRESS

John Chevedden

[REDACTED]
[REDACTED]
[REDACTED]

cc: James McRitchie

[REDACTED]
[REDACTED]
[REDACTED]

Re: Notice of Deficiency

Dear Mr. Chevedden:

I am writing to acknowledge receipt, on January 11, 2022, of the shareholder proposal (the "**Proposal**") submitted to Snowflake Inc. (the "**Company**") by James McRitchie (the "**Proponent**") pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), for inclusion in the Company's proxy materials for the 2022 Annual Meeting of Stockholders (the "**Annual Meeting**").

We have reviewed the Proposal and bring to your attention the following deficiency regarding eligibility in accordance with Rule 14a-8 of the Exchange Act.

Under the proxy rules of the Securities and Exchange Commission, in order to be eligible to submit a proposal for the Annual Meeting, Rule 14a-8(b)(1)(i) of the Exchange Act requires proponents to have continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the Company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively¹.

Our records indicate that you are not a registered holder of the Company's common stock. Please provide a written statement from the record holder of your shares (usually a bank or broker) and a participant in the Depository Trust Company ("**DTC**") verifying that, at the time you submitted the Proposal, you had beneficially held the requisite number of shares of the Company's common stock pursuant to the requirements of Rule 14a-8(b). For your reference, a copy of Rule 14a-8 is attached to this letter as Exhibit A.

¹ Alternatively, in order to be eligible to submit a proposal for the Annual Meeting, Rule 14a-8(b)(3) of the Exchange Act requires proponents to have continuously held at least \$2,000 in market value of the Company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and for proponents to have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date a proposal is submitted to the Company. If these requirements are met, proponents are eligible to submit a proposal to the Company for an annual or special meeting to be held prior to January 1, 2023. The Company closed its initial public offering in September 2020, and was not a publicly-traded company for at least one year as of January 4, 2021. Accordingly, the Proponent cannot rely on Rule 14a-8(b)(3) of the Exchange Act.

In order to determine if the bank or broker holding your shares is a DTC participant, you can check the DTC's participant list, which is currently available on the Internet at <http://www.dtcc.com/downloads/membership/directories/dtc/alpha.pdf>. If the bank or broker holding your shares is not a DTC participant, you also will need to obtain proof of ownership from the DTC participant through which the shares are held. You should be able to find out who this DTC participant is by asking your broker or bank. If the DTC participant knows your broker or bank's holdings, but does not know your holdings, you can satisfy Rule 14a-8 by obtaining and submitting two letters – one from your broker or bank confirming your ownership, and the other from the DTC participant confirming the broker or bank's ownership – verifying that, at the time the Proposal was submitted, the required amount of shares were continuously held for the applicable holding period. For additional information regarding the acceptable methods of proving your ownership of the minimum number of shares of the Company's common stock, please see Rule 14a-8(b)(2) in Exhibit A.

Rule 14a-8(f) of the Exchange Act requires you to correct the deficiency noted above in order to have the Proposal included in the Company's proxy materials for the Annual Meeting. The response to this letter and the appropriate documentation noted above must be postmarked or transmitted electronically to us no later than 14 calendar days from the date you receive this letter. Once we receive this documentation, we will be in a position to determine whether the Proposal is eligible for inclusion in the proxy materials for the Annual Meeting. Even if you remedy the defects noted above in a timely manner, the Company reserves the right to raise any substantive objections it has to your Proposal at a later date.

Sincerely,

Snowflake Inc.


DocuSigned by:

A0681364A02943C...
Derk Lupinek
General Counsel

EXHIBIT A

Rule 14a-8



Displaying title 17, up to date as of 12/15/2021. Title 17 was last amended 12/09/2021.

Title 17

EDITORIAL NOTE ON PART 240

Editorial Note: Nomenclature changes to part 240 appear at 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 240.14a-8 Shareholder proposals.

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

- (a) **Question 1:** What is a proposal? A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).
- (b) **Question 2:** Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?
 - (1) To be eligible to submit a proposal, you must satisfy the following requirements:
 - (i) You must have continuously held:
 - (A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or
 - (B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or
 - (C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or
 - (D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that § 240.14a-8(b)(3) expires; and
 - (ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and
 - (iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:
 - (A) Agree to the same dates and times of availability, or
 - (B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

- (iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:
 - (A) Identifies the company to which the proposal is directed;
 - (B) Identifies the annual or special meeting for which the proposal is submitted;
 - (C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;
 - (D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;
 - (E) Identifies the specific topic of the proposal to be submitted;
 - (F) Includes your statement supporting the proposal; and
 - (G) Is signed and dated by you.
 - (v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.
 - (vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.
- (2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:
- (i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.
 - (ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:
 - (A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or
 - (B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§ 240.13d-101), Schedule 13G (§ 240.13d-102), Form 3 (§ 249.103 of this chapter), Form 4 (§ 249.104 of this chapter), and/or Form 5 (§ 249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:
 - (1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;
 - (2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and
 - (3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.
- (3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to

submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

- (i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and
 - (ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.
 - (iii) This paragraph (b)(3) will expire on January 1, 2023.
- (c) **Question 3:** How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.
- (d) **Question 4:** How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.
- (e) **Question 5:** What is the deadline for submitting a proposal?
- (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§ 249.308a of this chapter), or in shareholder reports of investment companies under § 270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.
 - (2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.
 - (3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.
- (f) **Question 6:** What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?
- (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under § 240.14a-8 and provide you with a copy under Question 10 below, § 240.14a-8(j).
 - (2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.
- (g) **Question 7:** Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.
- (h) **Question 8:** Must I appear personally at the shareholders' meeting to present the proposal?
- (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

- (2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.
 - (3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.
- (i) **Question 9:** If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?
- (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

Note to paragraph (i)(1):

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

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

Note to paragraph (i)(2):

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

- (3) **Violation of proxy rules:** If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including § 240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- (4) **Personal grievance; special interest:** If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;
- (5) **Relevance:** If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;
- (6) **Absence of power/authority:** If the company would lack the power or authority to implement the proposal;
- (7) **Management functions:** If the proposal deals with a matter relating to the company's ordinary business operations;
- (8) **Director elections:** If the proposal:
 - (i) Would disqualify a nominee who is standing for election;
 - (ii) Would remove a director from office before his or her term expired;
 - (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
 - (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
 - (v) Otherwise could affect the outcome of the upcoming election of directors.
- (9) **Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

Note to paragraph (i)(9):

A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

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

Note to paragraph (i)(10):

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

- (11) **Duplication:** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- (12) **Resubmissions.** If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:
- (i) Less than 5 percent of the votes cast if previously voted on once;
 - (ii) Less than 15 percent of the votes cast if previously voted on twice; or
 - (iii) Less than 25 percent of the votes cast if previously voted on three or more times.
- (13) **Specific amount of dividends:** If the proposal relates to specific amounts of cash or stock dividends.
- (j) **Question 10:** What procedures must the company follow if it intends to exclude my proposal?
- (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.
 - (2) The company must file six paper copies of the following:
 - (i) The proposal;
 - (ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and
 - (iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.
- (k) **Question 11:** May I submit my own statement to the Commission responding to the company's arguments?
- Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.
- (l) **Question 12:** If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?
- (1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.
 - (2) The company is not responsible for the contents of your proposal or supporting statement.
- (m) **Question 13:** What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?
- (1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

- (2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, § 240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.
- (3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:
 - (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
 - (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under § 240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE

Effective Date Note: At 85 FR 70294, Nov. 4, 2020, § 240.14a-8 was amended by adding paragraph (b)(3), effective Jan. 4, 2021 through Jan. 1, 2023.

Exhibit C

Response from Proponent Received January 21, 2022 and January 23, 2022

01/20/2022

James McRitchie & Myra K Young
[REDACTED]

Re: Your TD Ameritrade Account

Dear James McRitchie & Myra Young,

Thank you for allowing me to assist you today. Pursuant to your request, this letter confirms that as of the date of this letter, James McRitchie and Myra Young held since 12/15/20 and continue to hold at least 10 class A common shares of Snowflake Inc (SNOW) in an account at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

If we can be of any further assistance, please let us know. Just log in to your account and go to the Message Center to write us. You can also call Private Client Services at 800-400-4078. We're available 24 hours a day, seven days a week.

Sincerely,



Jennifer Hickman
Resource Specialist
TD Ameritrade

TD Ameritrade understands the importance of protecting your privacy. From time to time we need to send you notifications like this one to give you important information about your account. If you've opted out of receiving promotional marketing communications from us, containing news about new and valuable TD Ameritrade services, we will continue to honor your request.

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

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TDA 1002212 11/21

Exhibit D

Company's Second Notice of Deficiency Dated January 26, 2022

From: Travis Shrout [REDACTED] >
Date: Wednesday, January 26, 2022 at 9:09 AM
To: James McRitchie <[REDACTED]>, John Chevedden <[REDACTED]>, [REDACTED] <[REDACTED]>
Cc: Derk Lupinek [REDACTED]
Subject: Re: (SNOW) BL

Dear Messrs. McRitchie and Chevedden,

Thank you for the below information. The ownership information you provided (copy attached) is not sufficient to confirm the Proponent's eligibility to submit a proposal under Rule 14a-8. The Proponent is not eligible to rely on the requirements set forth in Rule 14a-8(b)(3) because Snowflake Inc. (the "**Company**") went public in September 2020 and, as a result, it is not possible for the Proponent to have held the Company's securities for at least one year as of January 4, 2021.

The Proponent is therefore required to demonstrate its eligibility to submit a proposal pursuant to Rule 14a-8(b)(1)(C). As of January 11, 2022 (the date the Proponent's proposal was submitted), the Proponent must have continuously held **at least \$25,000** of the Company's securities entitled to vote on the proposal for **at least one year**. The ownership information provided showed continuous holdings of at least ten (10) shares of the Company's class A common stock, which is not sufficient to satisfy the eligibility requirement. If you are unable to provide information sufficient to confirm that the Proponent has held the minimum number of Company shares in order to be eligible under Rule 14a-8, we kindly request that the Proponent withdraw its proposal. In that case, if the proposal is not withdrawn by **February 7, 2022**, we will file a no-action letter with the SEC.

Best,

TRAVIS SHROUT

Sr. Director, Associate General Counsel - Corporate

MOBILE +1 [REDACTED]
EMAIL [REDACTED]

Snowflake Inc.

450 Concar Drive
San Mateo, CA 94402

This message contains information which may be confidential or privileged. Unless you are the intended addressee (or authorized to receive messages for the intended addressee), you may not use, copy or disclose to anyone the message or any information contained in the message or in any attachments. If you have received the message in error, please advise the sender by reply email and delete the message.

----- Forwarded message -----

From: James McRitchie [REDACTED]

Date: Sun, Jan 23, 2022 at 5:55 AM

Subject: (SNOW) BL

To: [REDACTED] >, Derk Lupinek <[REDACTED]>

CC: John Chevedden <[REDACTED]>

Dear Mr. Lupinek

I am in receipt of your notice of deficiency regarding my shareholder proposal requesting that uncontested directors be elected by majority vote. Please acknowledge receipt of the attached broker letter evidencing the requisite level of ownership.

Last year my proposals of this type that were included on the proxy averaged above a 90% vote in favor. The vast majority of companies receiving this type of proposal simply have their boards amend the bylaws, with agreed upon language. Then, upon filing of an 8-K evidencing such a change, I withdraw my proposal.

Sincerely,

James McRitchie
Shareholder Advocate
Corporate Governance
<http://www.corpgov.net>

[REDACTED]

[REDACTED]

--

DERK LUPINEK

General Counsel

MOBILE +1 [REDACTED]
EMAIL [REDACTED]



Snowflake Inc.
450 Concar Drive
San Mateo, CA 94402



March 21, 2022

U.S. Securities and Exchange Commission
Office of Chief Counsel
Division of Corporation Finance
100 F. Street, N.E.
Washington, D.C. 20549
Via email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Snowflake Inc.

Ladies and Gentlemen:

In a letter dated February 7, 2022, we requested that the staff of the Division of Corporation Finance of the Securities and Exchange Commission (the "**Staff**") concur that our client, Snowflake 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 James McRitchie and Myra K. Young (together, the "**Proponents**").

On March 17, 2022, Mr. McRitchie notified the Staff via email that the Proponents were withdrawing the Proposal. In reliance thereon, we hereby withdraw the February 7, 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 (650) 843-5864 if you have any questions.

Respectfully yours,

A handwritten signature in black ink that reads "Seth Gottlieb".

Seth Gottlieb

cc: Derk Lupinek, General Counsel, Snowflake Inc.
Travis Shrout, VP, Deputy General Counsel - Corporate, Snowflake Inc.
James McRitchie
Myra K. Young