



February 16, 2021

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Invitae Corporation
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Reference is made to the letter, dated February 3, 2021 (the “No Action Request”), submitted to the staff of the Division of Corporation Finance (the “Staff”) on behalf of our client Invitae Corporation (the “Company”) relating to the stockholder proposal for proxy access and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent’s agent”) on behalf of James McRitchie (the “Proponent”) for inclusion in the proxy materials for the Company’s 2021 annual meeting of stockholders (the “2021 Proxy Materials”). Further reference is made to a subsequent letter to the Staff from the undersigned dated February 9, 2021, and to subsequent letters to the Staff submitted by the Proponent dated February 6, 2021 and February 10, 2021.

At the request of the Company, we hereby withdraw the above-referenced No Action Request. As a result of additional information contained in the Proponent’s letter to the Staff dated February 10, 2021, the Company has determined that the Proponent’s agent actually submitted two proposals via email within four minutes of each other on January 19, 2021 – one as agent for the Proponent and another as agent for Myra K. Young. Because the emails were transmitted within four minutes of each other and contained the identical cover message text from the Proponent’s agent, the Company initially believed that the same email had been inadvertently transmitted twice by the Proponent’s agent. Upon further review, the Company has determined that the second email from the Proponent’s agent contained a different attachment consisting of a proposal for majority voting in uncontested director elections and the supporting statement of Myra K. Young. Because the Company now has the information needed in order to proceed accordingly with the two proposals, the Company withdraws the No Action Request with respect to the Proposal.



Office of Chief Counsel
Division of Corporation Finance
February 16, 2021
Page 2

Please do not hesitate to contact the undersigned on behalf of the Company via email at patty.degaetano@pillsburylaw.com or via phone at (858) 509-4033. The Proponent's agent, John Chevedden, may be reached via email at ^{***}

Sincerely,

A handwritten signature in black ink that reads "Patty DeGaetano". The signature is written in a cursive, flowing style.

Patty M. DeGaetano
Partner

cc: Thomas Brida, General Counsel and Secretary, Invitae Corporation
John Chevedden, agent for the Proponent

Corporate Governance

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

VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

February 10, 2021

Re: Invitae Corporation (NVTa) Rebuttal

To Whom It May Concern:

This is in response to a February 9, 2021 letter from Patty M. DeGaetano, acting as an agent Invitae Corporation (NVTa). Ms. DeGaetano is either confused or is attempting to confuse Staff. The facts are as follows:

John Chevedden, acting as the agent of James McRitchie, sent Mr. Brida, Corporate Secretary of Invitae Corporation a proposal on Shareholder Proxy Access on January 19, 2021. (Attachment 1)

John Chevedden, acting as the agent of Myra K. Young, sent Mr. Brida, Corporate Secretary of Invitae Corporation a proposal on election of Directors by Majority Vote on January 19, 2021. (Attachment 2)

On January 29, 2021, Mr. Chevedden sent Mr. Brida evidence of share ownership for Ms. Young's proposal. (Attachment 3)

On February 6, Mr. Chevedden sent Mr. Brida evidence of share ownership for Mr. McRitchie's proposal. (Attachment 4)

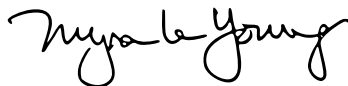
NVTa has the documents it needs to process both proposals.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, NVTa has failed to meet that burden. Staff must deny the no-action request.

Sincerely,



James McRitchie
Shareholder Advocate



Myra K. Young

cc: Thomas Brida, tom.brida@invitae.com
patty.degaetano@pillsburylaw.com

From: John Chevedden ***
Subject: Rule 14a-8 Proposal (NVTA)
Date: January 19, 2021 at 6:57 PM
To: Thomas Brida tom.brida@nvtae.com



Mr. Brida,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden



NVTA PA-
submit-2021.pdf

Corporate Governance

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9295 Yorkship Court
Elk Grove, CA 95758

Invitae Corporation
Thomas Brida
General Counsel and Secretary
1400 16th Street
San Francisco, California 94103
Attention: Corporate Secretary
tom.brida@invitae.com

Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting to allow **Shareholder Proxy Access**.

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

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

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

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

Sincerely,


James McRitchie

January 19, 2021

Date

cc:



[NVT A – Rule 14a-8 Proposal, January 19, 2021]
[This line and any line above it is not for publication.]
Proposal [4*] – Shareholder Proxy Access

Resolved: Shareholders of Invitae Corporation (“Company”) request that our board of directors take the steps necessary to enable as many shareholders as may be needed to aggregate their shares to equal 3% of our stock owned continuously for 3-years in order to enable shareholder proxy access with the following provisions:

Nominating shareholders and groups must have owned at least 3% of the outstanding shares of common stock of the Company continuously for a period of at least 3-years. Such shareholders shall be entitled to nominate a total of up to 25% of the number of authorized directors.

Supporting Statement: Proxy access for shareholders enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management’s director candidates. A competitive election is good for everyone. This proposal can help ensure that our management will nominate directors with outstanding qualifications in order to avoid giving shareholders a reason to exercise their right to use proxy access.

Under this proposal it is likely that the number of shareholders who participate in the aggregation process would still be a modest number due to the administrative burden on shareholders to qualify as one of the aggregation participants. Plus, it is easy for management to reject potential aggregating shareholders because the administrative burden on shareholders leads to a number of potential technical errors by shareholders that management can readily detect.

Proxy Access in the United States: Revisiting the Proposed SEC Rule (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>) a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion. *Public Versus Private Provision of Governance: The Case of Proxy Access* (<http://ssrn.com/abstract=2635695>) found a 0.5 percent average increase in shareholder value for proxy access targeted firms.

Proxy access has been adopted by 580 major companies, including 75% of the S&P 500, since 2015. Adoption of this proposal will make our Company more competitive in its corporate governance.

This proposal should be seen in the context that shareholders cannot elect all directors annually, remove directors without “cause,” call a special meeting, or to act by written consent. Additionally, a supermajority vote is required to change provisions.

Enhance Shareholder Value, Vote FOR
Shareholder Proxy Access – Proposal [4*]

[The above line is for publication. *Proposal number to be assigned by Company]





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

The graphic above is intended to be published with the rule 14a-8 proposal.

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

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

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

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

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

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

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

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

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

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

From: John Chevedden ***
Subject: Rule 14a-8 Proposal (NVTA)
Date: January 19, 2021 at 6:53 PM
To: Thomas Brida tom.brida@nvtac.com



Mr. Brida,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden



NVTA DMV-
submit...py.pdf

Corporate Governance

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9295 Yorkship Court
Elk Grove, CA 95758

Invitae Corporation
Thomas Brida
General Counsel and Secretary
1400 16th Street
San Francisco, California 94103
Attention: Corporate Secretary
tom.brida@invitae.com

Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting to require election of **Directors by Majority Vote** when unopposed.

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

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

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

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

Sincerely,


Myra K. Young

January 19, 2021

Date

cc:



Myra K. Young (spouse of James McRitchie, CorpGov.net)

[NVTA:Rule 14a-8 Proposal, January 19, 2021

[This line and any line above it – Not for publication.]

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

Resolved: Shareholders of Invitae Corporation (‘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. More than 90% of the companies in the S&P 500 have adopted majority voting for uncontested elections.

In 2019 and 2020 majority shares voted FOR similar proposals at 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, includes the following in their proxy voting guidance: “If the company has plurality voting, a fund will typically vote for shareholder proposals requiring majority vote for election of directors.” BlackRock’s proxy voting guidelines include the following: “Majority voting standards assist in ensuring that directors who are not broadly supported by shareholders are not elected to serve as their representatives.” Many of our other large shareholders have similar proxy voting policies.

This request should be seen in the context that our Company has a classified board, does not allow shareholders to call special meeting or act by written consent, and requires a supermajority vote to amend certain bylaws. 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



Myra K. Young (spouse of James McRitchie, CorpGov.net)

The graphic above is intended to be published with the rule 14a-8 proposal.

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

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

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

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

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

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

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

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

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

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

From: John Chevedden ***
Subject: Rule 14a-8 Proposa (NVTA) b b
Date: January 29, 2021 at 6:51 PM
To: Tom Brida tom.brida@nvtae.com

JC

Mr. Brida,

Please see the attached broker letter.
Please confirm receipt within a day.

Sincerely,
John Chevedden



01/25/2021

Myra Young
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 250 shares of Invitae Corporation (NVTA) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

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From: John Chevedden ***
Subject: #1 Rule 14a-8 Proposals (NVTA)
Date: February 7, 2021 at 8:20 PM
To: Office of Chief Counsel shareholderproposals@SEC.GOV
Cc: Tom Brada tom.brada@nvtae.com



Ladies and Gentlemen,
Please see the attached letter.
Sincerely,
John Chevedden

Corporate Governance

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Shareholder Advocate

cc: Thomas Brida, tom.brida@invitae.com (corrected)
patty.degaetano@pillsburylaw.com

Attachment: Broker Letter from TD Ameritrade

1



01/25/2021

James Mcritchie
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 78 common shares of Invitae Corporation (NVTA) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Gabriel Elliott', enclosed in a rectangular box.

Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

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February 9, 2021

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Invitae Corporation
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

Reference is made to the letter, dated February 3, 2021 (the “No Action Request”), submitted to the staff of the Division of Corporation Finance (the “Staff”) on behalf of Invitae Corporation (the “Company”) relating to the stockholder proposal and supporting statement (the “Proposal”) submitted by John Chevedden (the “Proponent’s agent”) on behalf of James McRitchie (the “Proponent”) for inclusion in the proxy materials for the Company’s 2021 annual meeting of stockholders (the “2021 Proxy Materials”). Further reference is made to the letter, dated February 6, 2021, submitted to the Staff by the Proponent (the “Rebuttal”).

As identified and described below, we respectfully submit that there are several factual issues with the Proponent’s Rebuttal. The Proponent’s Rebuttal refers to the proof of ownership broker letter, which is the subject of the No Action Request, and erroneously claims that “a broker letter evidencing ownership by my wife, Myra K. Young...supported Ms. Young’s shareholder proposal requesting a majority voting standard for unopposed directors.” First, the Proponent’s attempt to switch the identity of the proponent from James McRitchie to Myra K. Young is simply too late, as it is beyond the Company’s published deadline of January 29, 2021 for stockholders to submit proxy proposals to be included in the Company’s 2021 Proxy Materials. Further, neither the Proponent’s original cover letter nor the Proposal mentions Myra K. Young as a proponent or co-proponent of the Proposal. Not only was the cover letter not signed by Myra K. Young, but the Proponent’s cover letter explicitly stated, “Please identify James McRitchie as the proponent of the proposal *exclusively*” (emphasis added). The Proponent’s attempt to switch the identity of the proponent to Myra K. Young and/or add an additional proponent is untimely.



Office of Chief Counsel
Division of Corporation Finance
February 9, 2021
Page 2

Second, despite the Proponent's assertion that "a broker letter evidencing ownership by my wife, Myra K. Young" should have been sufficient to evidence the Proponent's ownership of the requisite shares of the Company's common stock to make him eligible to submit a proxy proposal, we respectfully submit it is not. The broker letter from TD AmeriTrade dated January 25, 2021 submitted by the Proponent's agent to the Company in response to the Company's timely deficiency notice clearly identified the sole owner of the shares as Myra K. Young, heretofore a third party unknown to the Company. The broker letter submitted by the Proponent's agent did not identify the Proponent as a co-owner of the shares held by TD AmeriTrade along with Myra K. Young, nor did the Proponent make any mention of Myra K. Young as a proponent or co-proponent in his cover letter or the Proposal. Stock held in the name of one stockholder does not support legal ownership of that same stock in another person. The Company does not have an obligation to know, infer or even speculate that shares represented to be held by one individual might actually be beneficially held in whole or in part by another individual, particularly when the individuals do not share the same last name. It is also the case that, despite marriage, many spouses continue to hold their shares as separate property. The No Action Request did not "fail[s] to mention that letter supported Ms. Young's shareholder proposal" because there is no "Ms. Young's shareholder proposal"; the Proponent is James McRitchie at his own insistence. Rule 14a-8(b)(2) clearly states that sufficient proof of ownership must verify that "at the time *you* submitted *your* proposal, *you* continuously held the securities for at least one year" (emphasis added). The Proponent's claim that his wife's ownership of shares should be sufficient is simply misplaced. As a related matter, if the Proponent were attempting to vote Ms. Young's shares, it would appear that he should not do so as he lacks the requisite authority.

Third, the Proponent's Rebuttal attempts to change the topic of the Proposal from proxy access to a "proposal requesting a majority voting standard for unopposed directors." However, it is simply too late to change the topic of the Proposal, again as it is beyond the Company's published deadline for submission of proxy proposals to be included in the Company's 2021 Proxy Materials. The Proposal as originally submitted by the Proponent was for proxy access and requested that the Board of Directors "take the steps necessary to enable as many shareholders as may be needed to aggregate their shares to equal 3% of our stock owned continuously for 3-years in order to enable shareholder proxy access. . . ." The Proponent cannot now switch the topic of his Proposal from proxy access to majority voting standard for unopposed directors simply through submission of the Proponent's Rebuttal, as the Proponent's



Office of Chief Counsel
Division of Corporation Finance
February 9, 2021
Page 3

Rebuttal is insufficient to provide the necessary information for valid submission of a proxy proposal to adopt a majority voting standard and is untimely.

Despite the Proponent's assertions otherwise, the Company has simply attempted to comply with the specific requirements set forth in Rule 14a-8 and the Staff's related guidance to identify where the Proponent has clearly not complied on the face of the documents he submits.

For the reasons set forth above, as well as the analysis set forth in the No Action Request, the Company respectfully reiterates its request that the Staff concur in our view that the Proposal may properly be excluded from the Company's 2021 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1).

Please do not hesitate to contact the undersigned on behalf of the Company via email at patty.degaetano@pillsburylaw.com or via phone at (858) 509-4033. The Proponent's agent, John Chevedden, may be reached via email at

*** In addition, the Company requests that the Proponent and the Proponent's agent copy the undersigned on any correspondence either may choose to submit to the Staff with respect to the Proposal, pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008).

Sincerely,

Patty M. DeGaetano
Partner

cc: Thomas Brida, General Counsel and Secretary, Invitae Corporation
John Chevedden, agent for the Proponent

Corporate Governance

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VIA EMAIL: shareholderproposals@sec.gov
Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

February 6, 2021

Re: Invitae Corporation (NVTA) Rebuttal

To Whom It May Concern:

This is in response to a February 3, 2021 letter from Patty M. DeGaetano, acting as an agent Invitae Corporation (NVTA).

Ms. DeGaetano acknowledges receipt of a broker letter evidencing ownership by my wife, Myra K. Young, but in what appears as a possible charade, fails to mention that letter supported Ms. Young's shareholder proposal requesting a majority voting standard for unopposed directors.

NVTA's notice of deficiency, dated January 29th, requests evidence of ownership within 14 days. Eight days later, I'm attaching the requested evidence. What I fail to understand is why NVTA is wasting money by hiring outside counsel to file a no-action request. Why the games? Perhaps this is an attempt to drive up the supposed cost estimates companies claim for processing shareholder proposals.

NVTA is not only wasting its own resources but also the valuable resources of SEC Staff. That demonstrates a lack of respect for the important role of Staff in deciding *real* issues that cannot be resolved between issuers and shareholders.

In permitting the exclusion of proposals, Rule 14a-8(g) imposes the burden of proof on companies. Companies seeking to establish the availability of exclusion under Rule 14a-8, therefore, have the burden of showing ineligibility. As argued above, NVTA has failed to meet that burden. Staff must deny the no-action request.

Sincerely,



James McRitchie
Shareholder Advocate

cc: Thomas Brida, tom.bride@invitae.com
patty.degaetano@pillsburylaw.com

Attachment: Broker Letter from TD Ameritrade

01/25/2021

James Mcritchie
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade Account Ending in [REDACTED]

Dear James Mcritchie,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie held and had held continuously for at least 13 months, 78 common shares of Invitae Corporation (NVTA) in an account ending in [REDACTED] at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,



Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

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Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300 | San Diego, CA 92130-4088 | tel 619.234.5000 | fax 858.509.4010

Patty M. DeGaetano
tel: +1.858.509.4033
fax: +1.858.435.1084
patty.degaetano@pillsburylaw.com

February 3, 2021

VIA EMAIL (shareholderproposals@sec.gov)

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

Re: Invitae Corporation
Stockholder Proposal of James McRitchie
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Invitae Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Stockholders (collectively, the “2021 Proxy Materials”) a stockholder proposal (the “Proposal”) and statement in support thereof received on behalf of James McRitchie (the “Proponent”). The Proposal requests that the Board of Directors “take the steps necessary to enable as many shareholders as may be needed to aggregate their shares to equal 3% of our stock owned continuously for 3-years in order to enable shareholder proxy access. . . .” The Proponent states in his letter to the Company that he has delegated John Chevedden to act as his agent regarding the Proposal.

Pursuant to Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) and Rule 14a-8(j), we are:

- transmitting this letter by electronic mail to the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) not less than 80 calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sending a copy of this letter to the Proponent’s agent.



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 2

Rule 14a-8(k) and 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. Accordingly, by copy of this letter we are reminding the Proponent's agent that if he elects to submit any correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

BASIS FOR EXCLUSION

We respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous stock ownership in response to the Company's proper request for that information.

BACKGROUND

The Proposal was submitted by email with a cover letter that was received by the Company on January 19, 2021 at 6:57 pm PT. *See Exhibit A.* The cover letter accompanying the Proposal, signed solely by the Proponent, stated, "The proposal meets all Rule 14a-8 requirements, including the continuous ownership of the required stock value for over a year." However, verification of the Proponent's stock ownership was not submitted with the Proposal. The Company reviewed its stock records, which did not indicate that the Proponent was a record owner of any shares of the Company's securities entitled to vote on the Proposal. The Company also noted that the Proponent had not submitted a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting his ownership of securities of the Company.

Accordingly, the Company properly sought verification of stock ownership from the Proponent's agent. Specifically, the Company sent the Proponent's agent a letter dated January 29, 2021, notifying the Proponent's agent that the Proponent had failed to provide the required proof of ownership of the Company's common stock, and referring the Proponent's agent to the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiency (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 3

No. 14F (Oct. 18, 2011) (“SLB 14F”), and referred the Proponent’s agent to Question 2 of Rule 14a-8 and SLB 14F. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company’s stock records, the Proponent was not a record owner 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 Proponent’s] shares (usually a broker or a bank) verifying that, at the time [the Proponent] submitted his Proposal (January 19, 2021), he continuously held at least \$2,000, or 1%, in market value of Invitae shares for at least the one-year period preceding and including the submission date”; and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent’s agent received the Deficiency Notice.

The Company transmitted the Deficiency Notice via email on January 29, 2021 at 3:51 pm PT and a courtesy copy was sent via overnight delivery on January 29, 2021, which was within 14 calendar days of the Company’s receipt of the Proposal. The Proponent requested in his cover letter that communications be sent via email to his agent at *** in order to “to facilitate prompt communication.” The email delivery of the Deficiency Notice was transmitted by the Company to the Proponent’s agent in a reply message to the original email message received from the Proponent’s agent transmitting the Proposal. The Company did not receive an error message or other automated response indicating that the Deficiency Letter was not received by the Proponent’s agent when sent.¹ This is also the same

¹ We note that California has adopted the Uniform Electronic Transactions Act which provides, “Unless otherwise agreed between a sender and the recipient, an electronic record is received when: (1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and (2) it is in a form capable of being processed by that system.” *See also* Cal. Civ. Code § 1633.15(b).



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 4

email address from which the Proponent's agent has sent and received other correspondence to and from the Company as described below. Overnight delivery service records confirm delivery of a courtesy physical copy of the Deficiency Notice to the Proponent's agent on February 1, 2021 at 4:12 pm PT. *See Exhibit C.*

The Company received a response to the Deficiency Notice from the Proponent's agent via email on January 29, 2021 at 6:51 pm PT, which included a cover email and a letter from TD Ameritrade, dated January 25, 2021, stating that "as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 250 shares of Invitae Corporation (NVTX) common stock in her account ending in 9314 at TD Ameritrade" (the "Young Ownership Letter"). *See Exhibit D.* However, nowhere in the cover letter or the Proposal does Myra K. Young appear as a proponent of the Proposal. Not only was the cover letter not signed by Myra K. Young, but the cover letter explicitly stated, "Please identify James McRitchie as the proponent of the proposal *exclusively*" (emphasis added). Moreover, the Young Ownership Letter is deficient on its face and it clearly did not contain sufficient proof of the Proponent's continuous ownership of the requisite number of Company shares for at least one year as of the date the Proposal was submitted (January 19, 2021), as requested by the Deficiency Notice and as required by Rule 14a-8(b). The Company received no other proof of ownership from the Proponent or the Proponent's agent subsequent to the Deficiency Notice.

On the next business day, February 1, 2021 at 8:17 am PT, the Company sent a courtesy email acknowledging receipt of the email from the Proponent's agent as requested by the Proponent's agent, and the Proponent's agent then replied briefly to the Company on February 1, 2021 at 9:21 am PT. *See Exhibit E.*

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(b) and Rule 14a-8(f)(1) Because the Proponent Failed to Timely Establish His Eligibility to Submit the Proposal Despite Proper Notice.

Rule 14a-8(b) provides guidance regarding what information must be provided to demonstrate that a person is eligible to submit a stockholder proposal. Rule 14a-8(b)(1) provides, in part, that "[i]n order to be eligible to submit a proposal, [a stockholder] must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 5

least one year by the date [the stockholder] submit[s] the proposal.” Staff Legal Bulletin No. 14 (Jul. 13, 2001) (“SLB 14”) specifies that when the stockholder is not a 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, SLB 14. Rule 14a-8(f)(1) permits a company to exclude a stockholder proposal from the company’s proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company has timely notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice. Staff Legal Bulletin No. 14G (Oct. 16, 2020) clarifies that the Staff will not concur in the exclusion of a proposal under Rules 14a-8(b) and 14-8(f) unless the company (i) provides a notice of defect that “identifies the specific date on which the proposal was submitted” and (ii) explains that the proof of ownership letter must verify “continuous ownership of the requisite amount of securities for the one-year period preceding and including such date to cure the defect.”

Here, the Company satisfied its obligation under Rule 14a-8 by transmitting to the Proponent’s agent in a timely manner the Deficiency Notice, which specifically set forth the information and instructions listed above and referred the Proponent’s agent to Rule 14a-8 and SLB 14F. The Deficiency Letter specifically identified January 19, 2021 as the date on which the Proposal was submitted and further explained that the Proponent was required to provide “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 his Proposal (January 19, 2021), he continuously held at least \$2,000, or 1%, in market value of Invitae shares for at least the one-year period preceding and including the submission date.” We are not aware of any situation where the Staff permitted a proponent to include securities that are owned by other persons to be considered as securities owned by the proponent. *See QUALCOMM Incorporated* (avail. Nov. 21, 2019), concurring with the exclusion of a stockholder proposal where the proponent submitted ownership proof of securities held in the name of the proponent’s adult children, rather than the proponent. Despite clear explanation in the Deficiency Letter to provide a written statement from the “record” holder of the Proponent’s shares verifying that the Proponent’s ownership, as of the date of this letter, neither the Proponent nor the Proponent’s agent has provided any such written statement that the Proponent has satisfied the ownership requirement. The Young Ownership Letter failed to address in



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 6

any manner the Proponent's ownership of any Company shares, let alone the continuous nature of the Proponent's ownership or for the full one-year period prior to and including the Proposal submission date. As such, consistent with the above-cited precedent, the Young Ownership Letter did not satisfy Rule 14a-8(b) and the Proposal may be properly excluded.

The Staff consistently has 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 very same agent for 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). *See also Time Warner Inc.* (avail. Mar. 13, 2018); *ITC Holdings Corp.* (avail. Feb. 9, 2016); *Prudential Financial, Inc.* (avail. Dec. 28, 2015); and *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (each concurring with the exclusion of a stockholder proposal where the proponent supplied proof of ownership 18, 35, 23 and 16 days, respectively, after receiving the company's timely deficiency notice). This was the outcome even if the evidence ultimately furnished otherwise satisfied Rule 14a-8(b). Here, subsequent to the receipt of the Deficiency Notice by the Proponent's agent, the Proponent has failed to provide any proof of his ownership at all. The Young Ownership Letter has no bearing on whether the Proponent has satisfied his proof of ownership requirements, as Myra K. Young is not a proponent of the Proposal. As noted above, the cover letter that accompanied the Proposal stated that James McRitchie should be identified as the exclusive Proponent.

The Staff previously has allowed companies to omit stockholder proposals pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b) where, after receiving proper notice from a company, the proof of ownership submitted by the stockholder failed to establish that the stockholder continuously held the requisite amount of the company's securities for one year as of the date the proposal was submitted. For example, in *Sempra Energy* (avail. Jan. 15, 2021), the Staff concurred in exclusion of a stockholder proposal where the documentary support presented by the proponent did not include verification from a DTC participant confirming the holdings of the broker, where the broker was not a DTC participant. In *Walgreens Boots Alliance, Inc. (John Chevedden)* (avail. Oct. 22, 2020), the Staff concurred in exclusion of a stockholder proposal where the broker letter established the proponent's ownership of



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 7

company shares only as of a specific date. In *General Electric Co.* (avail. Jan. 6, 2016), the Staff concurred that a broker letter stating that a proponent had purchased shares on a specific date more than a year earlier and that no additional shares were posted to or removed from the proponent's account did not establish that the proponent owned the requisite amount of company shares continuously for the one-year period as of the date the proposal was submitted. In *Intel Corp.* (avail. Feb. 24, 2014), the Staff concurred that the documentary support presented by the proponent failed to satisfy the requirements of Rule 14a-8(b), where the first broker letter only established ownership of company shares as of a single date in time (and did not address continuous ownership) and the second broker letter consisted only of a security record and positions report (which was insufficient to establish continuous ownership). See also *Ameren Corp.* (avail. Jan. 12, 2017) (concurring with the exclusion of a stockholder proposal where the initial broker letter only addressed the proponent's ownership as of a single date, two days prior to the proposal submission date, and failed to address continuous ownership, and the second broker letter submitted also failed to establish sufficient proof of ownership); and *The Boeing Co.* (avail. Jan. 27, 2015) (concurring with the exclusion of a stockholder proposal where the only letter received from a DTC participant confirmed ownership of company stock as of a single date in time, which was a different date than the proposal submission date, and failed to confirm that the proponent had continuously held the requisite amount of stock for at least one year as of the submission date). Not only does the Young Ownership Letter not establish that the Proponent continuously held the requisite amount of the Company's common stock for one year as of the date the Proposal was submitted, the Young Ownership Letter does not establish that the Proponent owns any shares of the Company's common stock that would allow him to submit the Proposal under Rule 14a-8.

Further, it is well established that where a company provides proper notice of a procedural defect to a proponent and the proponent's response fails to cure the defect, the company is not required to provide any further opportunities for the proponent to cure. In fact, Section C.6. of SLB 14 states that a company may exclude a proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) if "the shareholder timely responds but does not cure the eligibility or procedural defect(s)." The Staff has followed that guidance in many instances where a proponent's timely response to a notice of defect failed to establish the required share ownership and the company did not send a second deficiency notice. For example, in each of *Hewlett Packard Enterprise Company (John Chevedden)* (avail. Jan. 15, 2021) and *PDL BioPharma, Inc.* (avail. Mar. 1, 2019), the proponent submitted a proposal without any



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 8

accompanying proof of ownership, and the broker letter sent in response to the company's timely deficiency notice failed to establish that the proponent owned the requisite minimum number of shares. In each case, the Staff concurred with exclusion under Rule 14a-8(f) even though the company did not send a second deficiency notice to the proponent, who still had several days remaining in the 14-day cure period. *See also American Airlines Group, Inc.* (avail. Feb. 20, 2015); *Coca-Cola Co. (James McRitchie and Myra Young)* (avail. Dec. 16, 2014); and *Union Pacific Corp.* (avail. Jan. 29, 2010) (each concurring with the exclusion of a stockholder proposal where the proponent(s) submitted ownership proof which failed to satisfy the ownership requirements of Rule 14a-8(b) within seven, nine or three days, respectively, following receipt of the company's timely deficiency notice, and the company did not send a second deficiency notice). Here, the Proponent's agent timely responded to the Deficiency Notice by providing the Young Ownership Letter, however, the Young Ownership Letter does not cure the deficiency. And, in accordance with the above guidance, following receipt of the Young Ownership Letter, the Company was under no obligation to provide a second deficiency notice nor any additional time to cure the deficiency that remained.

Accordingly, consistent with the precedent cited above, the Proposal is excludable because, despite receiving timely and proper notice of deficiency pursuant to Rule 14a-8(f)(1), the Proponent failed to timely demonstrate that he owned any of the Company's securities, let alone continuously owned the required number of Company shares for the one-year period prior to and including the date the Proposal was submitted to the Company, as required by Rule 14a-8(b).

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2021 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.



Office of Chief Counsel
Division of Corporation Finance
February 3, 2021
Page 9

Pursuant to the guidance provided in Section F of SLB 14F, we ask that the Staff provide its response to this request to Patty DeGaetano, on behalf of the Company, via email at patty.degaetano@pillsburylaw.com, and to John Chevedden, the Proponent's agent, via email at ^{***}. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. If we can be of any further assistance in this matter, please do not hesitate to call me at (760) 310-1802.

Sincerely,

A handwritten signature in black ink that reads "Patty DeGaetano". The signature is written in a cursive, flowing style.

Patty M. DeGaetano
Partner

Enclosures

cc: Thomas Brida, General Counsel and Secretary, Invitae Corporation
John Chevedden, agent for the Proponent



EXHIBIT A

From: **John Chevedden** ***
Date: Tue, Jan 19, 2021 at 6:57 PM
Subject: Rule 14a-8 Proposal (NVTB)``
To: Thomas Brida <tom.brida@invitae.com>

Mr. Brida,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden

Corporate Governance

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

9295 Yorkship Court
Elk Grove, CA 95758

Invitae Corporation
Thomas Brida
General Counsel and Secretary
1400 16th Street
San Francisco, California 94103
Attention: Corporate Secretary
tom.brida@invitae.com

Dear Corporate Secretary,

I am submitting the attached shareholder proposal for a vote at the next annual shareholder meeting to allow **Shareholder Proxy Access**.

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

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

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

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

Sincerely,


James McRitchie

January 19, 2021

Date

cc:



[NVT A – Rule 14a-8 Proposal, January 19, 2021]
[This line and any line above it is not for publication.]
Proposal [4*] – Shareholder Proxy Access

Resolved: Shareholders of Invitae Corporation (“Company”) request that our board of directors take the steps necessary to enable as many shareholders as may be needed to aggregate their shares to equal 3% of our stock owned continuously for 3-years in order to enable shareholder proxy access with the following provisions:

Nominating shareholders and groups must have owned at least 3% of the outstanding shares of common stock of the Company continuously for a period of at least 3-years. Such shareholders shall be entitled to nominate a total of up to 25% of the number of authorized directors.

Supporting Statement: Proxy access for shareholders enables shareholders to put competing director candidates on the company ballot to see if they can get more votes than some of management’s director candidates. A competitive election is good for everyone. This proposal can help ensure that our management will nominate directors with outstanding qualifications in order to avoid giving shareholders a reason to exercise their right to use proxy access.

Under this proposal it is likely that the number of shareholders who participate in the aggregation process would still be a modest number due to the administrative burden on shareholders to qualify as one of the aggregation participants. Plus, it is easy for management to reject potential aggregating shareholders because the administrative burden on shareholders leads to a number of potential technical errors by shareholders that management can readily detect.

Proxy Access in the United States: Revisiting the Proposed SEC Rule (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>) a cost-benefit analysis by CFA Institute, found proxy access would “benefit both the markets and corporate boardrooms, with little cost or disruption,” raising US market capitalization by up to \$140.3 billion. *Public Versus Private Provision of Governance: The Case of Proxy Access* (<http://ssrn.com/abstract=2635695>) found a 0.5 percent average increase in shareholder value for proxy access targeted firms.

Proxy access has been adopted by 580 major companies, including 75% of the S&P 500, since 2015. Adoption of this proposal will make our Company more competitive in its corporate governance.

This proposal should be seen in the context that shareholders cannot elect all directors annually, remove directors without “cause,” call a special meeting, or to act by written consent. Additionally, a supermajority vote is required to change provisions.

Enhance Shareholder Value, Vote FOR
Shareholder Proxy Access – Proposal [4*]

[The above line is for publication. *Proposal number to be assigned by Company]





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

The graphic above is intended to be published with the rule 14a-8 proposal.

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

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

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

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

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

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

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

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

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

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

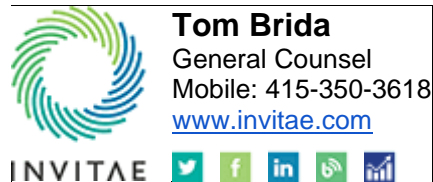


EXHIBIT B

From: Tom Brida <tom.brida@invitae.com>
Sent: Friday, January 29, 2021 3:51 PM
To: John Chevedden ***
Subject: Re: Rule 14a-8 Proposal (NVTA)``

*** EXTERNAL EMAIL ***

Mr. Chevedden, please see the attached.



From: John Chevedden ***
Date: Tue, Jan 19, 2021 at 6:57 PM
Subject: Rule 14a-8 Proposal (NVTA)``
To: Thomas Brida <tom.brida@invitae.com>

Mr. Brida,

Please see the attached rule 14a-8 proposal to improve corporate governance and enhance long-term shareholder value at de minimis up-front cost – especially considering the substantial market capitalization of the company.

I expect to forward a broker letter soon so if you acknowledge this proposal in an email message it may very well save you from requesting a broker letter from me.

Sincerely,
John Chevedden



INVITAE

January 29, 2021

VIA EMAIL AND OVERNIGHT MAIL

John Chevedden

Email: ***

Dear Mr. Chevedden:

On January 19, 2021, Invitae Corporation (“*Invitae*”) received Mr. James McRitchie’s stockholder proposal (the “*Proposal*”) for Invitae’s 2021 Annual Meeting of Stockholders included in a letter dated January 19, 2021, pursuant to which Mr. McRitchie designated you as his agent with respect to all communications relating to the Proposal. One of the procedural requirements in submitting a stockholder proposal is to provide proof that, at the time Mr. McRitchie submitted his Proposal, he continuously held at least \$2,000 in market value, or 1%, of Invitae’s shares for at least one year. Proof of ownership was omitted from the documents submitted with the Proposal. Please refer to Rule 14a-8 under the Securities Exchange Act of 1934, which describes in Question 2 the eligibility requirements for submitting a proposal and how you can demonstrate to Invitae that Mr. McRitchie is eligible to submit a proposal.

Invitae’s stock records do not reflect that Mr. McRitchie is the record holder of sufficient shares to satisfy this requirement. Therefore, in order to prove Mr. McRitchie’s eligibility to Invitae, Mr. McRitchie must provide Invitae’s Secretary with a written statement from the “record” holder of Mr. McRitchie’s shares (usually a broker or bank) verifying that, at the time Mr. McRitchie submitted his Proposal (January 19, 2021), he continuously held at least \$2,000, or 1%, in market value of Invitae shares for at least the one-year period preceding and including the submission date.

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

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

John Chevedden
January 29, 2021
Page 2

As outlined in SLB 14F, any written statement from a broker or bank must be provided from the DTC participant through which the shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check DTC's participant listing, which is currently available on the Internet at: <http://dtcc.com/client-center/dtc-directories.aspx>.

In the event that you are able to correct this deficiency, please send the written statement referred to above to Invitae Corporation, Attention Thomas Brida, General Counsel and Secretary, 1400 16th Street, San Francisco, CA 94103 (or alternatively you may transmit the statement electronically to tom.brida@invitae.com). Pursuant to Rule 14a-8, your response must be postmarked, or transmitted electronically, no later than 14 calendar days from the date you receive this notification. If the deficiency noted above is not corrected within this time period, Invitae may elect not to include the Proposal in its proxy statement for its 2021 Annual Meeting of Stockholders.

If you have any questions, please feel free to contact me at tom.brida@invitae.com.

Very truly yours,



Thomas Brida
General Counsel and Secretary

cc: James McRitchie
9295 Yorkship Court
Elk Grove, CA 95758

cc: Pillsbury Winthrop Shaw Pittman, LLP



EXHIBIT C



TRACK ANOTHER SHIPMENT

772773667570



ADD NICKNAME

Delivered
Monday, February 1, 2021 at 4:12 pm



DELIVERED

Signature not required

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

FROM

San Francisco, CA US

TO

REDONDO BEACH, CA US

Shipment Facts

TRACKING NUMBER

772773667570

SERVICE

FedEx Express Saver

WEIGHT

0.5 lbs / 0.23 kgs

DELIVERED TO

Residence

TOTAL PIECES

1

TOTAL SHIPMENT WEIGHT

0.5 lbs / 0.23 kgs

TERMS

Shipper

PACKAGING

FedEx Envelope

SPECIAL HANDLING SECTION

Deliver Weekday, Resident Address Only

SHIP DATE

1/30/21

STANDARD TRANSIT

2/3/21 by 8:00 pm

ACTUAL DELIVERY

2/1/21 at 4:12 pm

Travel History

TIME ZONE

Local Scan Time



Monday, February 1, 2021

4:12 PM	REDONDO BEACH, CA	Delivered Definitely on door. Package delivered to recipient address - please authorized
11:18 AM	HAWTHORNE, CA	On FedEx vehicle for delivery
7:03 AM	HAWTHORNE, CA	Local FedEx facility

Sunday, January 31, 2021

6:11 PM	OS ANGE ES, CA	A des na on so fac y
4:28 PM	MEMPH S, TN	Depa ed FedEx oca on
1:10:7 AM	MEMPH S, TN	A ved a FedEx oca on
5:42 AM	OAK AND, CA	Depa ed FedEx oca on

Saturday, January 30, 2021

7:52 PM	OAK AND, CA	A ved a FedEx oca on
6:57 PM	SAN FRANC SCO, CA	ef FedEx o gn fac y
3:07 PM	SAN FRANC SCO, CA	P cked up
1:39 PM	SAN FRANC SCO, CA	P cked up Tende ed a FedEx Off ce

Friday, January 29, 2021

2:50 PM Sh pmen nfo ma on sen o FedEx


Co apse H so y 



EXHIBIT D

From: **John Chevedden** ***
Date: Fri, Jan 29, 2021 at 6:51 PM
Subject: Rule 14a-8 Proposal (NVTA) blb
To: Tom Brida <tom.brida@invitae.com>

Mr. Brida,

Please see the attached broker letter.
Please confirm receipt within a day.

Sincerely,
John Chevedden



01/25/2021

Myra Young
9295 Yorkship Ct
Elk Grove, CA 95758

Re: Your TD Ameritrade Account Ending in ***

Dear Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, Myra K. Young held, and had held continuously for at least 13 months, 250 shares of Invitae Corporation (NVTA) common stock in her account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

A handwritten signature in cursive script that reads 'Gabriel Elliott'.

Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

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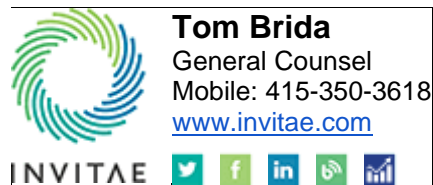
EXHIBIT E

From: **John Chevedden** ***
Date: Mon, Feb 1, 2021 at 9:21 AM
Subject: Rule 14a-8 Proposal (NVTA) blb
To: Tom Brida <tom.brida@invitae.com>

Good.

From: **Tom Brida** <tom.brida@invitae.com>
Date: Mon, Feb 1, 2021 at 8:17 AM
Subject: Re: Rule 14a-8 Proposal (NVTA) blb
To: John Chevedden ***

Received, thank you.



From: **John Chevedden** ***
Date: Fri, Jan 29, 2021 at 6:51 PM
Subject: Rule 14a-8 Proposal (NVTA) blb
To: Tom Brida <tom.brida@invitae.com>Mr. Brida,

Please see the attached broker letter.
Please confirm receipt within a day.

Sincerely,
John Chevedden