



DIVISION OF
CORPORATION FINANCE

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

April 16, 2021

Gordon K. Davidson
Fenwick & West LLP
gdavidson@fenwick.com

Re: ServiceNow, Inc.
Incoming letter dated February 1, 2021

Dear Mr. Davidson:

This letter is in response to your correspondence dated February 1, 2021 and March 5, 2021 concerning the shareholder proposal (the "Proposal") submitted to ServiceNow, Inc. (the "Company") by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence from the Proponent dated February 5, 2021, and correspondence on the Proponent's behalf dated February 8, 2021. Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2020-2021-shareholder-proposals-no-action>.

Sincerely,

Dorrie Yale
Special Counsel

Enclosure

cc: John Chevedden

April 16, 2021

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: ServiceNow, Inc.
Incoming letter dated February 1, 2021

The Proposal requests that the board take the steps necessary to amend the bylaws and governing documents to give shareholders with an aggregate of 15% net long of outstanding common stock the power to call a special meeting.

We are unable to conclude that the Company has met its burden of establishing that it may exclude the Proposal under rule 14a-8(i)(10). In this regard, we note your statement that the Company's proposed amendments have "not yet been formally approved by the [b]oard." Additionally, the Company did not confirm that the board has formally taken the actions discussed in its no-action request. Absent such confirmation, the staff is unable to conclude that the Company will take all requisite board actions, including those necessary to provide shareholders with the opportunity to vote on the applicable amendment. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(10).

Sincerely,

Michael Killoy
Special Counsel

GORDON K. DAVIDSON

EMAIL GDAVIDSON@FENWICK.COM

March 5, 2021

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

(via e-mail: shareholderproposals@sec.gov)

Cc: Russell S. Elmer, General Counsel and Corporate Secretary, ServiceNow, Inc.

Re: ServiceNow, Inc. - Correspondence Regarding Omission of Shareholder Proposal Submitted by James McRitchie

Ladies and Gentlemen,

Reference is made to (i) the No-Action Request dated February 1, 2021 submitted to the Staff of the Division of Corporation Finance (the “*Staff*”) by ServiceNow, Inc. (the “*Company*”) regarding the proposed exclusion of a shareholder proposal received by the Company from James McRitchie (the “*Proponent*”) and (ii) the communication dated February 5, 2021 (the “*Rebuttal*”) submitted by John Chevedden, as agent designated by the Proponent.

In the spirit of Staff Legal Bulletin No. 14D, Shareholder Proposals (Nov. 7, 2008) and full disclosure and in accordance with Rule 14a-8(j), we are sharing with the Staff correspondence between ourselves, on behalf of the Company, and the Proponent attached hereto.

Please direct any correspondence regarding this letter via e-mail to ir@servicenow.com. In addition, should the Staff have questions or desire any additional information, please contact me at (650) 335-7237 or Russell S. Elmer of ServiceNow at (408) 916-4588.

Best Regards,

Gordon Davidson

Gordon K. Davidson

APPENDIX A
CORRESPONDENCE WITH PROPONENT

March 5, 2021

Dear Mr. Chevedden,

This letter is in response to your communication dated February 5, 2021 (the “*Rebuttal*”), to the Office of Chief Counsel, Division of Corporation Finance of the U.S. Securities and Exchange Commission (the “*SEC*”), with the subject line “Re: ServiceNow, Inc (NOW) Rebuttal.”

As you know, on February 1, 2021, ServiceNow, Inc. (the “*Company*”) submitted to the SEC a No-Action Request (the “*No-Action Request*”), with respect to the stockholder proposal and supporting statement (the “*Proposal*”) submitted by you and Mr. James McRitchie.

Your Proposal requested that the Board of Directors of the Company (the “*Board*”) take the steps necessary to amend the Company’s bylaws and each appropriate governing document to give holders of record of 15% of the Company’s capital stock the right to call a special meeting of shareholders. In the No-Action Request, we explained that the Board has determined (i) to approve amendments to the Company’s Restated Bylaws (the “*Bylaws*”) and (ii) to approve and recommend that the shareholders approve amendments to the current Restated Certificate of Incorporation, as amended (the “*Existing Certificate*”), each to allow one or more shareholders holding at least 15% net long of the Company’s common stock for at least one year to call a special meeting of shareholders (the “*Company Proposal*”) and (iii) to direct that the Company Proposal be submitted to the Company’s shareholders for adoption at the 2021 Annual Meeting of Shareholders (“*2021 Annual Meeting*”).

As noted in the No-Action Request and in your Rebuttal, the Board lacks unilateral authority to amend the Certificate of Incorporation under the Delaware General Corporation Law but plans to submit the Company Proposal for a vote of the shareholders. For your reference, the draft text of the Company Proposal, as expected to be presented in the proxy materials for the 2021 Annual Meeting, the draft Certificate of Amendment to the Existing Certificate and the draft Restated Bylaws are attached as Attachments A, B and C, respectively.

In your Rebuttal, you indicate that you would be happy to review the text of what is to be considered by the Board, and that if such text met the representations set forth in the No-Action Request you would withdraw the Proposal, contingent upon adoption by the Board for inclusion in the proxy. As such, please take a look at the materials provided here; following your review, we kindly request that you withdraw the Proposal.

Sincerely,

FENWICK & WEST LLP

Gordon Davidson

Gordon K. Davidson

ATTACHMENT A
COMPANY PROPOSAL

PROPOSAL NO. [●]

**CHARTER AMENDMENT TO PROVIDE SHAREHOLDERS WITH THE RIGHT TO CALL A
SPECIAL MEETING OF SHAREHOLDERS**

Currently, our Charter provides that special meetings of shareholders may be called only by the Chairperson of the Board, the Chief Executive Officer, the President or the Board acting pursuant to a resolution adopted by a majority of the total number of authorized directors.

After carefully weighing the advantages and disadvantages of allowing certain shareholders to call a special meeting of shareholders, including through dialogue with the Nominating and Governance Committee and Lead Independent Director, the Board has determined that it is in the best interests of the Company and its shareholders to amend the Charter and the Bylaws to additionally allow one or more shareholders of record holding at least 15% of our outstanding common stock for at least one year to call a special meeting of shareholders under certain circumstances. The proposed Charter Amendment is attached to this proxy statement as **Appendix [●]**. The Board approved the amendments to the Charter and Bylaws, subject to obtaining the required approval of our shareholders to the Charter Amendment and to the effectiveness of the Charter Amendment. The proposed Charter Amendment would become effective on the date of filing with the Secretary of State of the State of Delaware, which the Company expects to be promptly following the Annual Meeting if our shareholders approve the Charter Amendment.

In deciding to approve the proposed Charter Amendment and the Restated Bylaws and to recommend that the shareholders vote to adopt the Charter Amendment, the Board reviewed evolving corporate governance practices and considered the benefits and risks of the proposed amendments. In particular, the Board considered the advantages of protecting the Company from preparing for and conducting expensive and time-consuming meetings being held on issues that have limited support from the wider body of shareholders, reducing the Company's vulnerability to coercive takeover tactics, limiting the diversion of the attention of the Company's directors, officers and certain employees from performing their primary function of operating the Company's business in the best interests of its shareholders, and otherwise preventing unneeded disruption and promoting regularity. However, the Board also considered the view of certain shareholders who believe that shareholders' ability to call a special meeting is considered an important aspect of best corporate governance practices. The Board agrees with our shareholders and believes it is in the best interests of the Company and our shareholders to provide this additional means by which special meetings of shareholders may be called, provided that the meeting is called by shareholders with a meaningful, long-term interest in the Company.

The proposed Charter Amendment would provide that special meetings of shareholders may be called only in accordance with the Company's Bylaws. The Restated Bylaws would allow one or more shareholders holding at least 15% of our outstanding common stock for at least one year to call a special meeting of shareholders. This length of ownership requirement is consistent with the SEC's rules regarding the determination of a shareholder's eligibility to submit a shareholder proposal for an annual or special shareholder meeting. This proposal does not impact the current power of the Chairperson of the Board, the Chief Executive Officer, the President or the Board to call a special meeting. Further, the Board will continue to maintain the Company's existing governance mechanisms that afford management

and the Board the ability to respond to proposals and concerns of all shareholders, regardless of the level of share ownership.

Vote Required and Recommendation of the Board

An amendment to our Charter requires the affirmative supermajority vote of the holders of at least two-thirds of all outstanding shares of common stock unless two-thirds of our Board has approved such amendment, in which case such amendment would require only the affirmative vote of the holders of at least a majority of all outstanding shares of common stock. The Board has unanimously approved the Charter Amendment; therefore, the affirmative vote of the holders of a majority of the outstanding shares of common stock entitled to vote generally in the election of directors on the Record Date is required to approve this proposal pursuant to the Charter.

**OUR BOARD OF DIRECTORS RECOMMENDS A VOTE “FOR” THE PROPOSAL TO
AMEND THE CHARTER TO PROVIDE SHAREHOLDERS WITH THE RIGHT TO CALL A
SPECIAL MEETING OF SHAREHOLDERS.**

ATTACHMENT B
CERTIFICATE OF AMENDMENT TO EXISTING CERTIFICATE
CERTIFICATE OF AMENDMENT
TO THE
RESTATED CERTIFICATE OF INCORPORATION
OF
SERVICENOW, INC.

ServiceNow, Inc. (the “*Corporation*”), a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “*General Corporation Law*”) does hereby certify as follows:

FIRST: The name of this corporation is ServiceNow, Inc. This corporation was originally incorporated pursuant to the General Corporation Law on February 16, 2012.

SECOND: The following amendment to the Corporation’s Restated Certificate of Incorporation, as amended, has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law:

1. Article VII, Section 3 of the Restated Certificate of Incorporation, as amended, is amended to read in its entirety as follows:

3. Special Meetings of Stockholders. Special meetings of stockholders for any purpose or purposes may be called only in accordance with the Bylaws.

IN WITNESS WHEREOF, said corporation has caused this Certificate of Amendment to be signed by its duly authorized officer this [●] day of [●], 2021 and the foregoing facts stated herein are true and correct.

SERVICENOW, INC.

By: _____
William R. McDermott, President and
Chief Executive Officer

ATTACHMENT C
RESTATED BYLAWS

SERVICENOW, INC.

a Delaware Corporation

RESTATED BYLAWS

As amended on [●], 2021

SERVICENOW, INC.

a Delaware Corporation

RESTATED BYLAWS

As amended on [●], 2021

ARTICLE I: STOCKHOLDERS

Section 1.1: Annual Meetings. An annual meeting of stockholders shall be held for the election of directors at such date and time as the Board of Directors of the Corporation (the “**Board**”) shall each year fix. The meeting may be held either at a place, within or without the State of Delaware as permitted by the Delaware General Corporation Law (the “**DGCL**”), or by means of remote communication as the Board in its sole discretion may determine. Any proper business may be transacted at the annual meeting.

Section 1.2: Special Meetings.

(a) Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, or the Board acting pursuant to a resolution adopted by a majority of the “**Whole Board**,” which shall mean the total number of authorized directors, whether or not there exist any vacancies in previously authorized directorships. If the special meeting of stockholders is to be called at the request of any such person or persons other than by a majority of the Whole Board at a meeting, then such person or persons shall request such meeting by delivering a written request to call such meeting to each member of the Board, and the Board shall then determine the time and date of such special meeting, which shall be held not more than one hundred twenty (120) nor less than thirty-five (35) days after the written request to call such special meeting was delivered to each member of the Board. Special meetings may not be called by any other person or persons, except as provided in Section 1.2(b) below. The special meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine.

(b) A special meeting of the stockholders shall be called by the Board upon written request, delivered by hand or by registered U.S. mail, postage prepaid, return receipt requested, or courier service, postage prepaid, to the attention of the Secretary of the Corporation at the principal executive offices of the Corporation, of one or more stockholders of the Corporation having record ownership, in the aggregate, of not less than fifteen percent (15%) of the outstanding shares entitled to vote on the matter or matters to be brought before the proposed special meeting for at least one year prior to the date such request is delivered to the Secretary of the Corporation, and who have complied in full with the requirements of this Section 1.2(b). A request to the Secretary of the Corporation shall be signed by each stockholder, or a duly authorized agent of such stockholder, requesting the special meeting and shall be accompanied by a notice setting forth the information required by Section 1.11(b) below as to the business proposed to be conducted and the information required by Section 1.12(d)(i) through (iv) below as to any nominations proposed to be presented at such special meeting and as to the stockholder(s) proposing such business or nominations, and by a representation by the stockholder(s) that, within five business days after the record date for any such special meeting, the stockholder(s) will provide such information as of the record date for such special meeting. A special meeting requested by stockholders shall be held at such date, time and place, within or outside the State of Delaware designated by the Board; provided, however, that the date of any such special meeting shall not be more than 90 days after the request to call the special meeting is received by the Secretary of the Corporation. Notwithstanding the foregoing, a special meeting requested by stockholders shall not be held if (a) the Board has called or calls for an annual meeting of stockholders to be held within 90 days after the Secretary of the Corporation receives the request for the special meeting and the Board determines in good faith that the business of such annual meeting includes (among any other matters properly brought before the annual meeting) an identical or substantially similar matter (as determined in good faith by the Board, a “**Similar Matter**”) as the business specified in the request;(b) an annual or special meeting that included a Similar Matter to the business specified in the request (as determined in good faith by the Board) was held not more than 90 days before the request to call the special meeting was received by the Secretary of the Corporation; (c) the stated business to be brought before the special meeting is not a proper subject for stockholder action under applicable law; or (d) the special meeting request was made in a manner that did not comply with the requirements of these Restated Bylaws or involved a violation of Regulation 14A under the Securities Exchange Act of 1934 (as

amended and with the rules and regulations promulgated thereunder the “*Exchange Act*”). For purposes of this Section 1.2(b), the election of directors shall be deemed to be a “Similar Matter” with respect to all items of business involving the election or removal of directors, changing the size of the Board and the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors. The stockholders that call for a special meeting may revoke a request for the special meeting at any time by written revocation delivered to the Secretary of the Corporation, and if, following such revocation, there are unrevoked requests from stockholders holding, in the aggregate, less than the requisite number of shares entitling the stockholders to request the calling of a special meeting, the Board, in its discretion, may cancel the special meeting. Business transacted at a special meeting requested by stockholders shall be limited to the purpose(s) stated in the request for such special meeting, provided, however, that the Board shall have the authority in its discretion to submit additional matters to the stockholders, and to cause other business to be transacted, at any special meeting requested by stockholders to the extent provided in the notice of the meeting.

(c) In determining whether a special meeting of stockholders has been requested by stockholders having the requisite record ownership required by Section 1.2(b), multiple special meeting requests delivered to the Secretary of the Corporation will be considered together only if (a) each special meeting request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board (which, if such purpose is the election or removal of directors, changing the size of the Board and/or the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors, will mean that the exact same person or persons are proposed for election or removal in each relevant stockholder meeting request), and (b) such special meeting requests have been dated and delivered to the Secretary of the Corporation within 60 days of the earliest dated special meeting request.

(d) If none of the stockholders requesting the special meeting appear or send a duly authorized agent to present the business to be presented for consideration specified in the special meeting request, the Corporation need not present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation.

Section 1.3: Notice of Meetings. Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by law (including, without limitation, as set forth in Section 7.1 of these Restated Bylaws) stating the date, time and place, if any, of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Restated Certificate of Incorporation of the Corporation, as amended from time to time (the “*Certificate of Incorporation*”), such notice shall be given not less than ten (10), nor more than sixty (60), days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

Section 1.4: Adjournments. The chairperson of the meeting shall have the power to adjourn the meeting to another time, date and place (if any). Any meeting of stockholders may adjourn from time to time, and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. To the fullest extent permitted by law, the Board may postpone or reschedule any previously scheduled special or annual meeting of stockholders before it is to be held, in which case notice shall be provided to the stockholders of the new date, time and place, if any, of the meeting as provided in Section 1.3 above.

Section 1.5: Quorum. At each meeting of stockholders the holders of a majority of the voting power of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, unless otherwise required by applicable law. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairperson of the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation), shall neither

be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum.

Section 1.6: Organization. Meetings of stockholders shall be presided over by (a) such person as the Board may designate, or, (b) in the absence of such a person, the Chairperson of the Board, or, (c) in the absence of such person, the Lead Independent Director, or (d) in the absence of such person, the Chief Executive Officer of the Corporation, or, (e) in the absence of such person, the President or the most senior officer of the Corporation present, in that order of priority, or (f) in the absence of any such person, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at the meeting. Such person shall be chairperson of the meeting and, subject to Section 1.11 hereof, shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 1.7: Voting; Proxies. Unless otherwise provided by law or the Certificate of Incorporation, and subject to the provisions of Section 1.8 of these Restated Bylaws, each stockholder shall be entitled to one (1) vote for each share of stock held by such stockholder. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Neither election of directors nor voting on other matters to be brought before the stockholders at meetings of stockholders need be by written ballot unless demand is so made by any stockholder at the meeting before voting begins or the chairperson of the meeting so elects. If a vote is to be taken by written ballot, then each such ballot shall state the name of the stockholder or proxy voting and such other information as the chairperson of the meeting deems appropriate and, if authorized by the Board, the ballot may be submitted by electronic transmission in the manner provided by law. Unless otherwise provided by applicable law, the rules of any stock exchange upon which the Corporation's securities are listed, the Certificate of Incorporation or these Restated Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote thereon that are present in person or represented by proxy at the meeting and are voted for or against the matter.

Section 1.8: Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, unless otherwise required by law, the Board may fix, in advance, a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board and which shall not be more than sixty (60), nor less than ten (10), days before the date of such meeting, nor more than sixty (60) days prior to any other action. If no record date is fixed by the Board, then the record date shall be as provided by applicable law. To the fullest extent permitted by law, a determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting, in which case, such new record date shall apply to such adjourned meeting.

Section 1.9: List of Stockholders Entitled to Vote. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network as permitted by law (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. If the meeting is held at a location where stockholders may attend in person, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present at the meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

Section 1.10: Inspectors of Elections.

(a) Applicability. Unless otherwise required by the Certificate of Incorporation or by the DGCL, the following provisions of this Section 1.10 shall apply only if and when the Corporation has a class of voting stock that is: (i) listed on a national securities exchange; (ii) authorized for quotation on an interdealer quotation system of a registered national securities association; or (iii) held of record by more than two thousand (2,000) stockholders. In all other cases, observance of the provisions of this Section 1.10 shall be optional, and at the discretion of the Board.

(b) Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

(c) Inspector's Oath. Each inspector of election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

(d) Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (i) ascertain the number of shares outstanding and the voting power of each share, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(e) Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the chairperson of the meeting at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(f) Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) of the DGCL, or Sections 212(c)(2) or 211(e) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.10 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

Section 1.11: Notice of Stockholder Business; Nominations.

(a) Annual Meeting of Stockholders.

(i) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders shall be made at an annual meeting of stockholders (A) pursuant to the Corporation's notice of such meeting, (B) by or at the direction of the Board or (C) by any stockholder of the Corporation who was a stockholder of record (the "**Record Stockholder**") at the time of giving of the notice provided for in this Section 1.11 or Section 1.12, who is entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 1.11 or Section 1.12. For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose business (other than business included in the Corporation's proxy materials pursuant to Rule 14a-8 under the Exchange Act), at an annual meeting of stockholders.

(ii) For nominations or other business to be properly brought before an annual meeting by a Record Stockholder pursuant to Section 1.11(a)(i)(C):

(A) the Record Stockholder must have given timely notice thereof in writing to the Secretary of the Corporation;

(B) such other business must otherwise be a proper matter for stockholder action under the DGCL;

(C) if the Record Stockholder, or the beneficial owner, if any, on whose behalf any such proposal or nomination is made, has provided the Corporation with a Solicitation Notice, as that term is defined in this Section, such Record Stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the Corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the Corporation's voting shares reasonably believed by such Record Stockholder or beneficial holder, as the case may be, to be sufficient to elect the nominee or nominees proposed to be nominated by such Record Stockholder, and must, in either case, have included in such materials the Solicitation Notice (as defined below); and

(D) if no Solicitation Notice relating thereto has been timely provided pursuant to this Section, the Record Stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section.

To be timely (other than a notice by an Eligible Holder (as defined in Section 1.12) who seeks to include a Nominee (as defined in Section 1.12) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.12), a Record Stockholder's notice must be received by the Secretary of the Corporation at the principal executive offices of the Corporation not later than 5:00 p.m. Pacific Time on the seventy-fifth (75th) day nor earlier than 5:00 p.m. Pacific Time on the one hundred and fifth (105th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that, subject to the immediately following sentence, in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the Record Stockholder to be timely must be received on the later of (A) no earlier than 5:00 p.m. Pacific Time on the one hundred and fifth (105th) day prior to currently proposed annual meeting and no later than 5:00 p.m. Pacific Time on the later of the seventy-fifth (75th) day prior to such annual meeting or (B) 5:00 p.m. Pacific Time on the tenth (10th) day following the day on which Public Announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment, or postponement of an annual meeting for which notice has been given, commence a new time period for providing the stockholder's notice. Such Record Stockholder's notice (other than a notice by an Eligible Holder (as defined in Section 1.12) who seeks to include a Nominee (as defined in Section 1.12) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.12) shall set forth:

(X) if such notice pertains to the nomination of directors, (1) as to each person whom the Record Stockholder proposes to nominate for election or reelection as a director, all information relating to such person that would be required to be disclosed in solicitations of proxies for election of such nominees as directors, or would be otherwise required, in each case pursuant to Regulation 14A under the Exchange Act, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected, and (2) a statement whether such person, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and upon acceptance of such resignation by the Board, in accordance with the Corporation's Corporate Governance Guidelines;

(Y) as to any other business that the Record Stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such Record Stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and

(Z) as to the Record Stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (1) the name and address of such Record Stockholder, as they appear on the

Corporation's books, and of such beneficial owner, (2) the class, series, and number of shares of the Corporation that are directly or indirectly owned beneficially and held of record by such Record Stockholder and such beneficial owner, including any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "*Derivative Instrument*") directly or indirectly owned beneficially by such Record Stockholder or beneficial owner, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation, (3) whether or not either such Record Stockholder or beneficial owner will deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting power required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting power reasonably believed by such Record Stockholder or beneficial holder to be sufficient to elect such nominee or nominees (an affirmative statement of such intent being a "*Solicitation Notice*"), (4) any proxy, contract, arrangement, understanding, or relationship pursuant to which the Record Stockholder or beneficial owner has a right to vote, directly or indirectly, any shares of any security of the Corporation, and (5) any other information relating to each such Record Stockholder or beneficial owner that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or the election of directors in a contested election pursuant to Section 14 of the Exchange Act.

(iii) Notwithstanding anything in the second sentence of Section 1.11(a)(ii) to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no Public Announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least seventy five (75) days prior to the first anniversary of the preceding year's annual meeting (or, if the annual meeting is held more than thirty (30) days before or sixty (60) days after such anniversary date, at least seventy five (75) days prior to such annual meeting), a stockholder's notice required by this Section 1.11 (other than a notice by an Eligible Holder (as defined in Section 1.12) who seeks to include a Nominee (as defined in Section 1.12) in the Corporation's proxy statement for an annual meeting of stockholders pursuant to Section 1.12) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation no later than 5:00 p.m. Pacific Time on the tenth (10th) day following the day on which such Public Announcement is first made by the Corporation.

(iv) Notwithstanding the provisions of subparagraph (a)(ii) of Section 1.11, nominations of persons for election to the Board of Directors may also be properly brought before an annual meeting of stockholders by any Eligible Holder (as defined in Section 1.12) who has satisfied the requirements of Section 1.12.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of such meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of such meeting (a) by or at the direction of the Board or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time of giving of notice of the special meeting, who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 1.11. Nominations by stockholders of persons for election to the Board may be made at such special meeting of stockholders if the nominee(s) are named in the special meeting request delivered pursuant to Section 1.2(b) above or at any special meeting of the stockholders called pursuant to Section 1.2(a) above if the stockholder's notice required by Section 1.11(a)(ii) shall be received by the Secretary of the Corporation at the principal executive offices of the Corporation (i) no earlier than the one hundred fifth (105th) day prior to such special meeting and (ii) no later than the close of business on the later of the seventy fifth (75th) day prior to such special meeting or the tenth (10th) day following the day on which Public Announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(c) General.

(i) Only such persons who are nominated in accordance with the procedures set forth in this Section 1.11 or Section 1.12 shall be eligible to serve as directors and only such business shall be conducted at a meeting of

stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 1.11. Except as otherwise provided by law or these Restated Bylaws (including Section 1.12), the chairperson of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 1.11 and, if any proposed nomination or business is not in compliance herewith, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(ii) For purposes of this Section 1.11 and Section 1.12, the term “**Public Announcement**” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, Reuters, PR Newswire, or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(d) Notwithstanding the foregoing provisions of this Section 1.11 and the provisions of Section 1.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth herein. Nothing in this Section 1.11 or Section 1.12 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 1.12: Stockholder Nominations Included in the Corporation's Proxy Materials.

(a) Inclusion of Nominees in Proxy Statement. Subject to the provisions of this Section 1.12, if expressly requested in the relevant Nomination Notice (as defined below), the Corporation shall include in its proxy statement for any annual meeting of stockholders:

(i) the name or names of any person or persons nominated for election (each, a “**Nominee**”), which shall also be included on the Corporation's form of proxy and ballot, by any Eligible Holder (as defined below) or group of up to twenty (20) Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board, all applicable conditions and complied with all applicable procedures set forth in this Section 1.12 (such Eligible Holder or group of Eligible Holders being a “**Nominating Stockholder**”);

(ii) disclosure about each Nominee and the Nominating Stockholder required under the rules of the Securities and Exchange Commission or other applicable law to be included in the proxy statement; and

(iii) any statement included by the Nominating Stockholder in the Nomination Notice for inclusion in the proxy statement in support of each Nominee's election to the Board (subject, without limitation, to Section 1.12(e)(ii)), if such statement does not exceed 500 words and fully complies with Section 14 of the Exchange Act and the rules and regulations thereunder, including Rule 14a-9 (the “**Supporting Statement**”).

The Corporation may also include any other information that the Corporation or the Board determines, in their discretion, to include in the proxy statement relating to the nomination of each Nominee, including, without limitation, any statement in opposition to the nomination, any of the information provided pursuant to this Section and any solicitation materials or related information with respect to a Nominee.

For purposes of this Section 1.12, any determination to be made by the Board may be made by the Board, a committee of the Board or any officer of the Corporation designated by the Board or a committee of the Board, and any such determination shall be final and binding on the Corporation, any Eligible Holder, any Nominating Stockholder, any Nominee and any other person so long as made in good faith (without any further requirements). The chairperson of any annual meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether a Nominee has been nominated in accordance with the requirements of this Section 1.12 and, if not so nominated, shall direct and declare at the meeting that such Nominee shall not be considered.

(b) Maximum Number of Nominees.

(i) The Corporation shall not be required to include in the proxy statement for an annual meeting of stockholders more Nominees than that number of directors constituting the greater of (A) two (2) or (B) twenty percent (20%) of the total number of directors of the Corporation on the last day on which a Nomination Notice may be submitted pursuant to this Section 1.12 (rounded down to the nearest whole number) (the “**Maximum Number**”). The Maximum Number for a particular annual meeting shall be reduced by: (1) Nominees who the Board itself decides to nominate for election at such annual meeting; (2) Nominees who cease to satisfy, or Nominees of Nominating Stockholders that cease to satisfy, the eligibility requirements in this Section 1.12, as determined by the Board; (3) Nominees whose nomination is withdrawn by the Nominating Stockholder or who become unwilling to serve on the Board; and (4) the number of incumbent directors who had been Nominees with respect to any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting is being recommended by the Board. In the event that one or more vacancies for any reason occurs on the Board after the deadline for submitting a Nomination Notice as set forth in Section 1.12(d) below but before the date of the annual meeting, and the Board resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of directors in office as so reduced.

(ii) If the number of Nominees pursuant to this Section 1.12 for any annual meeting of stockholders exceeds the Maximum Number then, promptly upon notice from the Corporation, each Nominating Stockholder will select one Nominee for inclusion in the proxy statement until the Maximum Number is reached, going in order of the amount (largest to smallest) of the ownership position as disclosed in each Nominating Stockholder's Nomination Notice, with the process repeated if the Maximum Number is not reached after each Nominating Stockholder has selected one Nominee. If, after the deadline for submitting a Nomination Notice as set forth in Section 1.12(d), a Nominating Stockholder or a Nominee ceases to satisfy the eligibility requirements in this Section 1.12, as determined by the Board, a Nominating Stockholder withdraws its nomination or a Nominee becomes unwilling to serve on the Board, whether before or after the mailing or other distribution of the definitive proxy statement, then the nomination shall be disregarded, and the Corporation: (1) shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Stockholder or by any other Nominating Stockholder and (2) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that a Nominee will not be included as a nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(c) Eligibility of Nominating Stockholder.

(i) An “**Eligible Holder**” is a person who has either (A) been a record holder of the shares of common stock used to satisfy the eligibility requirements in this Section 1.12(c) continuously for the three-year period specified in Subsection (ii) below or (B) provides to the Secretary of the Corporation, within the time period referred to in Section 1.12(d), evidence of continuous ownership of such shares for such three-year period from one or more securities intermediaries in a form that the Board determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Exchange Act (or any successor rule).

(ii) An Eligible Holder or group of up to twenty (20) Eligible Holders may submit a nomination in accordance with this Section 1.12 only if the person or group (in the aggregate) has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's common stock throughout the three-year period preceding and including the date of submission of the Nomination Notice, and continues to own at least the Minimum Number through the date of the annual meeting. Two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by a single employer or (C) a “group of investment companies,” as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one Eligible Holder if such Eligible Holder shall provide together with the Nomination Notice documentation reasonably satisfactory to the Corporation that demonstrates that the funds meet the criteria set forth in (A), (B) or (C) immediately above. For the avoidance of doubt, in the event of a nomination by a group of Eligible Holders, any and all requirements and obligations for an individual Eligible Holder that are set forth in this Section 1.12, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder cease to satisfy the eligibility requirements in this Section 1.12, as determined by the Board, or withdraw from a group of Eligible Holders at any time prior to the annual meeting of stockholders, the group of Eligible Holders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The “*Minimum Number*” of shares of the Corporation's common stock means three percent (3%) of the number of outstanding shares of common stock as of the most recent date for which such amount is given in any filing by the Corporation with the Securities and Exchange Commission prior to the submission of the Nomination Notice.

(iv) For purposes of this Section 1.12, an Eligible Holder “owns” only those outstanding shares of common stock of the Corporation as to which the Eligible Holder possesses both:

(A) the full voting and investment rights pertaining to the shares; and

(B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares;

provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares: (1) purchased or sold by such Eligible Holder or any of its affiliates in any transaction that has not been settled or closed, (2) sold short by such Eligible Holder, (3) borrowed by such Eligible Holder or any of its affiliates for any purpose or purchased by such Eligible Holder or any of its affiliates pursuant to an agreement to resell or subject to any other obligation to resell to another person, or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Holder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (x) reducing in any manner, to any extent or at any time in the future, such Eligible Holder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (y) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Holder or any of its affiliates.

An Eligible Holder “owns” shares held in the name of a nominee or other intermediary so long as the Eligible Holder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Holder. An Eligible Holder's ownership of shares shall be deemed to continue during any period in which the Eligible Holder has loaned such shares provided that the Eligible Holder has the power to recall such loaned shares on five business days' notice and continues to hold such shares through the date of the annual meeting. The terms “owned,” “owning” and other variations of the word “own” shall have correlative meanings. Whether outstanding shares of the Corporation are “owned” for these purposes shall be determined by the Board.

(v) No Eligible Holder shall be permitted to be in more than one group constituting a Nominating Stockholder, and if any Eligible Holder appears as a member of more than one group, it shall be deemed to be a member of the group that has the largest ownership position as reflected in the Nomination Notice.

(d) Nomination Notice. To nominate a Nominee, the Nominating Stockholder must, not less than one hundred and twenty (120) nor more than one hundred and fifty (150) calendar days prior to the anniversary of the date (as specified in the Corporation's proxy materials for its immediately preceding annual meeting of stockholders) on which the Corporation first sent its proxy materials for its immediately preceding annual meeting of stockholders, deliver to the Secretary of the Corporation by 5:00 p.m. Pacific Time at the principal executive office of the Corporation all of the following information and documents (collectively, the “*Nomination Notice*”); provided, however, that if (and only if) the scheduled date of the annual meeting is thirty (30) days before or sixty (60) days after such anniversary date, the Nomination Notice shall be given in the manner provided herein by the later of (i) no earlier than 5:00 p.m. Pacific Time on the date that is one hundred and fifty (150) days prior to the date of the annual meeting and no later than 5:00 p.m. Pacific Time on the date that is one hundred and twenty (120) days prior to the date of the annual meeting or (ii) 5:00 p.m. Pacific Time on the tenth day following the day on which public announcement of the date of such meeting is first made by the Corporation. In no event will the public announcement of an adjournment or postponement of an annual meeting of stockholders commence a new time period for the giving of the Nomination Notice as provided above. For the purposes of these bylaws, the Nomination Notice shall include the following:

(i) A Schedule 14N (or any successor form) relating to each Nominee, completed and filed with the Securities and Exchange Commission by the Nominating Stockholder as applicable, in accordance with Securities and Exchange Commission rules;

(ii) A written notice, in a form deemed satisfactory by the Board, of the nomination of each Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

(A) the information required with respect to the nomination of directors pursuant to Section 1.11;

(B) a completed written questionnaire with respect to the background and qualifications of the Nominee, which questionnaire shall be provided by the Secretary of the Corporation upon written request;

(C) the class, series and number of any shares of stock of the Corporation that are beneficially owned or owned of record by the Nominee;

(D) the date or dates such shares were acquired by the Nominee and the investment intent of such acquisitions;

(E) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if such relationship existed on the date of submission of the Schedule 14N;

(F) a description of all direct and indirect compensation and other material monetary agreements, arrangements, and understandings during the past three years, and any other material relationships, between or among the Nominating Stockholder and any control person or other person acting in concert, on the one hand, and each Nominee, and each Nominee's respective affiliates or persons acting in concert, on the other hand;

(G) a representation and warranty that the Nominating Stockholder acquired the securities of the Corporation in the ordinary course of business and did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(H) a representation and warranty that each Nominee's candidacy or, if elected, Board membership would not violate applicable state or federal law or the rules of any stock exchange on which the Corporation's securities are traded;

(I) a representation and warranty that each Nominee:

(1) does not have any direct or indirect relationship with the Corporation that would cause the Nominee to be considered not independent pursuant to the Corporation's Corporate Governance Guidelines as most recently published on its website and otherwise qualifies as independent under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded;

(2) meets the audit committee and compensation committee independence requirements under the rules of the primary stock exchange on which the Corporation's shares of common stock are traded;

(3) is a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);

(4) is an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision);

(5) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended, or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of such Nominee;

(J) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 1.12(c) and has provided evidence of ownership to the extent required by Section 1.12(c)(i);

(K) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 1.12(c) through the date of the annual meeting;

(L) details of any position of a Nominee as an officer or director of any competitor of the Corporation (that is, any entity that produces products or provides services that compete with or are alternatives to the products produced or services provided by the Corporation or its affiliates), within the three years preceding the submission of the Nomination Notice;

(M) a representation and warranty that the Nominating Stockholder will not engage in a "solicitation" within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting, other than with respect to a Nominee or any nominee of the Board;

(N) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation's proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting;

(O) if desired, a Supporting Statement; and

(P) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(iii) An executed agreement, in a form deemed satisfactory by the Board, pursuant to which the Nominating Stockholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file any written solicitation or other communication with the Corporation's stockholders relating to one or more of the Corporation's directors or director nominees or any Nominee with the Securities and Exchange Commission, regardless of whether any such filing is required under rule or regulation or whether any exemption from filing is available for such materials under any rule or regulation;

(C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder or any of its Nominees with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Nomination Notice;

(D) to indemnify and hold harmless (jointly with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of or relating to a failure or alleged failure of the Nominating Stockholder or any of its Nominees to comply with, or any breach or alleged breach of, its or their obligations, agreements or representations under this Section 1.12;

(E) in the event that any information included in the Nomination Notice, or any other communication by the Nominating Stockholder (including with respect to any group member), with the Corporation, its stockholders or any other person in connection with the nomination or election ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or that the Nominating Stockholder (including any group member) has failed to continue to satisfy the eligibility requirements described in Section 1.12(c), to promptly (and in any event within 48 hours of discovering such misstatement, omission or failure) notify the Corporation and any other recipient of such communication of (A) the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission or (B) such failure; and

(iv) An executed agreement, in a form deemed satisfactory by the Board, by each

Nominee:

(A) to provide to the Corporation such other information and certifications, including completion of the Corporation's director questionnaire, as it may reasonably request;

(B) at the reasonable request of the Nominating and Governance Committee, to meet with the Nominating and Governance Committee to discuss matters relating to the nomination of such Nominee to the Board, including the information provided by such Nominee to the Corporation in connection with his or her nomination and such Nominee's eligibility to serve as a member of the Board;

(C) that such Nominee has read and agrees, if elected, to serve as a member of the Board, to adhere to the Corporation's Corporate Governance Guidelines, Code of Conduct and Ethics and any other Corporation policies and guidelines applicable to directors; and

(D) that such Nominee is not and will not become a party to (i) any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the Corporation that has not been disclosed to the Corporation, (ii) any agreement, arrangement or understanding with any person or entity as to how such Nominee would vote or act on any issue or question as a director (a "***Voting Commitment***") that has not been disclosed to the Corporation or (iii) any Voting Commitment that could limit or interfere with such Nominee's ability to comply, if elected as a director of the Corporation, with his or her fiduciary duties under applicable law.

The information and documents required by this Section 1.12(d) to be provided by the Nominating Stockholder shall be: (i) provided with respect to and executed by each group member, in the case of information applicable to group members; and (ii) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) in the case of a Nominating Stockholder or group member that is an entity. The Nomination Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 1.12(d) (other than such information and documents contemplated to be provided after the date the Nomination Notice is provided) have been delivered to or, if sent by mail, received by the Secretary of the Corporation.

(e) Exceptions.

(i) Notwithstanding anything to the contrary contained in this Section 1.12, the Corporation may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Stockholder's Supporting Statement) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of such Nominee, if:

(A) the Corporation receives a notice pursuant to Section 1.11 that a stockholder intends to nominate a candidate for director at the annual meeting, whether or not such notice is subsequently withdrawn or made the subject of a settlement with the Corporation;

(B) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the annual meeting to present the nomination submitted pursuant to this Section 1.12, the Nominating Stockholder withdraws its nomination or the chairperson of the annual meeting declares that such nomination was not made in accordance with the procedures prescribed by this Section 1.12 and shall therefore be disregarded;

(C) the Board determines that such Nominee's nomination or election to the Board would result in the Corporation violating or failing to be in compliance with the Corporation's bylaws or certificate of incorporation or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of the primary stock exchange on which the Corporation's common stock is traded;

(D) such Nominee was nominated for election to the Board pursuant to this Section 1.12 at one of the Corporation's two preceding annual meetings of stockholders and either withdrew or became ineligible or received a vote of less than twenty five percent (25%) of the shares of common stock entitled to vote for such Nominee;

(E) such Nominee is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten years;

(F) such Nominee has been, within the past three years, an officer or director of a competitor, as defined for purposes of Section 8 of the Clayton Antitrust Act of 1914, as amended;

(G) the Corporation is notified, or the Board determines, that the Nominating Stockholder or the Nominee has failed to continue to satisfy the eligibility requirements described in Section 1.12(c), any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), such Nominee becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Stockholder or such Nominee under this Section 1.12;

(ii) Notwithstanding anything to the contrary contained in this Section 1.12, the Corporation may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the Supporting Statement or any other statement in support of a Nominee included in the Nomination Notice, if the Board determines that:

(A) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading;

(B) such information directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or

(C) the inclusion of such information in the proxy statement would otherwise violate the Securities and Exchange Commission proxy rules or any other applicable law, rule or regulation.

The Corporation may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

ARTICLE II: BOARD OF DIRECTORS

Section 2.1: Number; Qualifications. The Board shall consist of one or more members. The number of directors, unless otherwise required by law or provided in the Certificate of Incorporation, shall be fixed from time to time by resolution of a majority of the Whole Board. No decrease in the authorized number of directors constituting the Board shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

Section 2.2: Election; Vacancies. Prior to the 2023 annual meeting of stockholders, the directors shall be divided, with respect to the time for which they severally hold office, into classes as provided in the Certificate of Incorporation. Commencing with the 2021 annual meeting of stockholders, each class of directors whose terms shall then expire shall be elected to hold office for a one-year term expiring at the next annual meeting of stockholders, as provided in the Certificate of Incorporation. Any vacancies occurring in the Board and any newly created directorships resulting from any increase in the authorized number of directors shall be filled, as provided in the Certificate of Incorporation. A nominee for director shall be elected to the Board of Directors if the votes cast for such nominee's election exceed the votes cast against such nominee's election; provided, however, that directors shall be elected by a plurality of the votes cast at any meeting of stockholders for which (a) a stockholder has effectively nominated a person for election to the Board in compliance with the advance notice requirements set forth in Article I, Section 1.11 of these Restated Bylaws or the inclusion of a Nominee (as defined in Section 1.12) in the Corporation's proxy statement as set forth in Section 1.12, and (b) such nomination has not been withdrawn by such stockholder on or before the tenth (10th) day before the Corporation first mails its notice of meeting for such meeting to the stockholders. If directors are to be elected by a plurality of the votes cast, stockholders shall not be permitted to vote against a nominee.

Section 2.3: Regular Meetings. Regular meetings of the Board may be held at such places, within or without the State of Delaware, and at such times as the Board may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board.

Section 2.4: Special Meetings. Special meetings of the Board may be called by the Chairperson of the Board, the Chief Executive Officer, the President or a majority of the members of the Board then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile, electronic mail or other means of electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

Section 2.5: Remote Meetings Permitted. Members of the Board, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

Section 2.6: Quorum; Vote Required for Action. At all meetings of the Board a majority of the Whole Board shall constitute a quorum for the transaction of business. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date or time without further notice thereof. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 2.7: Organization. Meetings of the Board shall be presided over by (a) the Chairperson of the Board or, (b) in the absence of such person, the Lead Independent Director, or (c) in the absence of such person, the Chief Executive Officer of the Corporation, or, (d) in the absence of such person, by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8: Written Action by Directors. Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively, in the minute books of the Corporation. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.9: Powers. The Board may, except as otherwise required by law or the Certificate of Incorporation, exercise all such powers and manage and direct all such acts and things as may be exercised or done by the Corporation.

Section 2.10: Compensation of Directors. Members of the Board, as such, may receive, pursuant to a resolution of the Board, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board.

ARTICLE III: COMMITTEES

Section 3.1: Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving, adopting or recommending to the stockholders any action or matter (other than the election or removal of members of the Board) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation.

Section 3.2: Committee Rules. Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business not in conflict with the provisions of this Article III. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Restated Bylaws. Adequate provision shall be made for notice to members of a committee of all meetings of such committee, and, unless such committee has determined otherwise, all matters shall be determined by a majority vote of the members present. Action may be taken by any committee without a meeting if all members thereof consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of the proceedings of such committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV: OFFICERS

Section 4.1: Generally. The officers of the Corporation shall consist of a Chief Executive Officer (who may be the Chairperson of the Board or the President), a Secretary and a Treasurer and may consist of such other officers, including a Chief Financial Officer, and one or more Vice Presidents, as may from time to time be appointed by the Board. All officers shall be elected by the Board; provided, however, that the Board may empower the Chief Executive Officer of the Corporation to appoint any officer other than the Chairperson of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Each officer shall hold office until such person's successor is appointed or until such person's earlier resignation, death or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board.

Section 4.2: Chief Executive Officer. Subject to the control of the Board and such supervisory powers, if any, as may be given by the Board, the powers and duties of the Chief Executive Officer of the Corporation are:

(a) To act as the general manager and, subject to the control of the Board, to have general supervision, direction and control of the business and affairs of the Corporation;

(b) Subject to Section 1.6, to preside at all meetings of the stockholders;

(c) Subject to Section 1.2, to call special meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Restated Bylaws, at such places as he or she shall deem proper;

(d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation; and

(e) To vote and otherwise act on, or to authorize any officer to vote or otherwise act on, on behalf of the Corporation, in person or by proxy, at any meeting of stockholders of or with respect to any action of stockholders of any other corporation in which this Corporation may hold securities and otherwise to exercise, or authorize any officer otherwise to exercise, any and all rights and powers which this Corporation may possess by reason of its ownership of securities in such other corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board has not designated any other officer to be the Chief Executive Officer, then the Chairperson of the Board shall be the Chief Executive Officer.

Section 4.3: Chairperson of the Board. Subject to the provisions of Section 2.7, the Chairperson of the Board shall have the power to preside at all meetings of the Board, shall have the power to sign certificates for shares of stock of the Corporation, and shall have such other powers and duties as provided in these Restated Bylaws and as the Board may from time to time prescribe.

Section 4.4: Lead Independent Director. The Board may, in its discretion elect a Lead Independent Director from among its members that are “**Independent Directors**” (as defined below). He or she shall preside at all meetings at which the Chairperson of the Board is not present and shall exercise such other powers and duties as may from time to time be assigned to him or her by the Board or as prescribed by these Restated Bylaws. For purposes of these Restated Bylaws, “Independent Director” has the meaning ascribed to such term under the rules of the New York Stock Exchange or other stock exchange upon which the Corporation's common stock is primarily traded.

Section 4.5: President. The Chief Executive Officer shall be the President of the Corporation unless the Board shall have designated one individual as the President and a different individual as the Chief Executive Officer of the Corporation. Subject to the provisions of these Restated Bylaws and to the direction of the Board, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board to the Chairperson of the Board, and/or to any other officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President), shall have the power to sign certificates for shares of stock of the Corporation, and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board.

Section 4.6: Vice President. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

Section 4.7: Chief Financial Officer. The Chief Financial Officer shall be the Treasurer of the Corporation unless the Board shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer, or as the Board may from time to time prescribe.

Section 4.8: Treasurer. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall have the power to sign certificates for shares of stock of the Corporation also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board or the Chief Executive Officer may from time to time prescribe.

Section 4.9: Secretary. The Secretary shall issue or cause to be issued all authorized notices for, and shall record, or cause to be recorded, the proceedings of all meetings of the stockholders and the Board in a book to be kept for such purposes. The Secretary shall have charge of the corporate minute books and similar records, shall have the power to sign certificates for shares of stock of the Corporation, and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board or the Chief Executive Officer may from time to time prescribe.

Section 4.10: Delegation of Authority. The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 4.11: Removal. Any officer of the Corporation shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by the Board; provided that if the Board has empowered the Chief Executive Officer to appoint any Vice Presidents of the Corporation, then such Vice Presidents may be removed by the Chief Executive Officer. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

ARTICLE V: STOCK

Section 5.1: Certificates; Uncertificated Shares. The shares of capital stock of the Corporation shall be represented by certificates; provided, that, the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation (or the transfer agent or registrar, as the case may be). Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairperson or Vice-Chairperson of the Board, or the Chief Executive Officer or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares owned by such holder in the Corporation in certificate form. Any or all of the signatures on the certificate may be a facsimile.

Section 5.2: Consideration and Payment for Shares.

(a) **Permitted Consideration.** Subject to applicable law and the Certificate of Incorporation, shares of stock may be issued for such consideration, having in the case of shares with par value a value not less than the par value thereof, and to such persons, as determined from time to time by the Board. The consideration may consist of any tangible or intangible property or benefit to the Corporation including, but not limited to, cash, promissory notes, services performed, contracts for services to be performed or other securities.

(b) **Payment for Shares.** Subject to applicable law and the Certificate of Incorporation, shares may not be issued until the full amount of the consideration has been paid, unless upon the face or back of each certificate issued to represent any partly paid shares of capital stock or upon the books and records of the Corporation in the case of partly paid uncertificated shares, there shall have been set forth the total amount of the consideration to be paid therefor and the amount paid thereon up to and including the time said certificate representing certificated shares or said uncertificated shares are issued.

Section 5.3: Lost, Destroyed or Wrongfully Taken Stock Certificates.

(a) **Replacement.** If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to

the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) Failure to Notify. If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares.

Section 5.4: Transfer of Stock.

(a) Complete Transfers. If a certificate representing shares of the Corporation is presented to the Corporation with an endorsement requesting the registration of transfer of such shares or an instruction is presented to the Corporation requesting the registration of transfer of uncertificated shares, the Corporation shall register the transfer as requested if:

(i) in the case of certificated shares, the certificate representing such shares has been surrendered;

(ii) (A) with respect to certificated shares, the endorsement is made by the person specified by the certificate as entitled to such shares; (B) with respect to uncertificated shares, an instruction is made by the registered owner of such uncertificated shares; or (C) with respect to certificated shares or uncertificated shares, the endorsement or instruction is made by any other appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(iii) the Corporation has received a guarantee of signature of the person signing such endorsement or instruction or such other reasonable assurance that the endorsement or instruction is genuine and authorized as the Corporation may request;

(iv) the transfer does not violate any restriction on transfer imposed by the Corporation that is enforceable in accordance with Section 5.6; and

(v) such other conditions for such transfer as shall be provided for under applicable law have been satisfied.

(b) Other Transfers. Whenever any transfer of shares shall be made for collateral security and not absolutely, the Corporation shall so record such fact in the entry of transfer if, when the certificate for such shares is presented to the Corporation for transfer or, if such shares are uncertificated, when the instruction for registration of transfer thereof is presented to the Corporation, both the transferor and transferee request the Corporation to do so.

Section 5.5: Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 5.6: Effect of Corporation's Restriction on Transfer.

(a) Enforceability. A written restriction on the transfer or registration of transfer of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, if permitted by the DGCL and noted conspicuously on the certificate representing such shares or, in the case of uncertificated shares,

contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares, may be enforced against the holder of such shares or any successor or transferee of the holder including an executor, administrator, trustee, guardian or other fiduciary entrusted with like responsibility for the person or estate of the holder.

(b) Notification. A restriction imposed by the Corporation on the transfer or the registration of shares of the Corporation or on the amount of shares of the Corporation that may be owned by any person or group of persons, even if otherwise lawful, is ineffective against a person without actual knowledge of such restriction unless: (i) the shares are certificated and such restriction is noted conspicuously on the certificate; or (ii) the shares are uncertificated and such restriction was contained in a notice sent by the Corporation to the registered owner of such shares within a reasonable time after the issuance or transfer of such shares.

Section 5.7: Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

ARTICLE VI: INDEMNIFICATION

Section 6.1: Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or other proceeding, whether civil, criminal, administrative, investigative, legislative or any other type whatsoever, preliminary, informal or formal, including any arbitration or other alternative dispute resolution and including any appeal of any of the foregoing (a "**Proceeding**"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a member of the Board or officer of the Corporation or a Reincorporated Predecessor (as defined below) is or was serving at the request of the Corporation or a Reincorporated Predecessor as a member of the board of directors or officer of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (for purposes of this Article VI, an "**Indemnitee**"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith, provided such Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. Such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of such Indemnitees' heirs, executors and administrators. Notwithstanding the foregoing, the Corporation shall indemnify any such Indemnitee seeking indemnity in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if such Proceeding (or part thereof) was authorized by the Board. As used herein, the term the "**Reincorporated Predecessor**" means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger; (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

Section 6.2: Advance of Expenses. Except as otherwise provided in a written indemnification agreement between the Corporation and an Indemnitee, the Corporation shall pay all expenses (including attorneys' fees) incurred by such an Indemnitee in defending any such Proceeding as they are incurred in advance of its final disposition; provided, however, that (a) if the DGCL then so requires, the payment of such expenses incurred by such an Indemnitee in advance of the final disposition of such Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it should be determined ultimately by final judicial decision from which there is no appeal that such Indemnitee is not entitled to be indemnified under this Article VI or otherwise; and (b) the Corporation shall not be required to advance any expenses to a person against whom the Corporation directly brings a claim, in a Proceeding, alleging that such person has breached such person's duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

Section 6.3: Non-Exclusivity of Rights. The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, these Restated Bylaws, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

Section 6.4: Indemnification Contracts. The Board is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification or advancement rights to such person. Such rights may be greater than those provided in this Article VI.

Section 6.5: Right of Indemnitee to Bring Suit. The following shall apply to the extent not in conflict with any indemnification contract provided for in Section 6.4 above.

(a) **Right to Bring Suit.** If a claim under Section 6.1 or 6.2 of this Article VI is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in applicable law.

(b) **Effect of Determination.** Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in applicable law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit.

(c) **Burden of Proof.** In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI, or otherwise, shall be on the Corporation.

Section 6.6: Nature of Rights. The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of any provision of this Article VI that adversely affects any right of an Indemnitee or an Indemnitee's successors shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, repeal or modification.

Section 6.7: Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

ARTICLE VII: NOTICES

Section 7.1: Notice.

(a) **Form and Delivery.** Except as otherwise specifically permitted or required in these Restated Bylaws (including, without limitation, Section 7.1(b) below) or required by law, all notices required to be given pursuant to these Restated Bylaws shall be in writing and may, (i) in every instance in connection with any delivery to a member of the Board, be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid telegram, cablegram, overnight express courier, facsimile, electronic mail or other form of electronic transmission and (ii) effectively be delivered to a stockholder when given by hand delivery, by depositing such notice in the mail, postage prepaid or, if specifically consented to by the stockholder as described in Section 7.1(b) of this Article VII by sending such notice by telegram, cablegram, facsimile, electronic mail or other form of electronic transmission. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (w) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (x) in the case of delivery by mail, upon deposit in the mail, (y) in the case of delivery by overnight express courier, when dispatched, and (z) in the case of delivery via telegram, cablegram, facsimile, electronic mail or other form of electronic transmission, when dispatched.

(b) **Electronic Transmission.** Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation, or these Restated Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given in accordance with Section 232 of the DGCL. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1(b) shall be deemed given: (w) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (x) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (y) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (z) if by any other form of electronic transmission, when directed to the stockholder.

(c) **Affidavit of Giving Notice.** An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 7.2: Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Restated Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

ARTICLE VIII: INTERESTED DIRECTORS

Section 8.1: Interested Directors. No contract or transaction between the Corporation and one or more of its members of the Board or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are members of the Board or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (a) the material facts as to his, her or their relationship

or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders.

Section 8.2: Quorum. Interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

ARTICLE IX: MISCELLANEOUS

Section 9.1: Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board.

Section 9.2: Seal. The Board may provide for a corporate seal, which may have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board.

Section 9.3: Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of any information storage device or method, electronic or otherwise, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

Section 9.4: Reliance Upon Books and Records. A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5: Certificate of Incorporation Governs. In the event of any conflict or inconsistency between the provisions of the Certificate of Incorporation and these Restated Bylaws, the provisions of the Certificate of Incorporation shall govern and prevail.

Section 9.6: Severability. If any provision of these Restated Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Restated Bylaws (including without limitation, all portions of any section of these Restated Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

Section 9.7: Time Periods. In applying any provision of these Restated Bylaws which requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

ARTICLE X: AMENDMENT

Notwithstanding any other provision of these Restated Bylaws, any amendment or repeal of these Restated Bylaws shall require the approval of the Whole Board or the stockholders of the Corporation as provided in the Certificate of Incorporation.

* * * * *

JOHN CHEVEDDEN

February 8, 2021

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

1 Rule 14a-8 Proposal
ServiceNow, Inc. (NOW)
Special Shareholder Meeting
James McRitchie

Ladies and Gentlemen:


This is in regard to the February 1, 2021 no-action request.

This could be called a skeleton no action request because it has absolutely no estimate of when the board might act.

Plus the no action request is silent on whether there are material restrictions that apply to the purported proposed 15% stock ownership threshold to call a special shareholder meeting.

Plus the no action request said VIA E-MAIL and management failed to forward the no action request to the shareholder by email in spite of the use of email communication with the shareholder since 2019 and then used a slower delivery method.

Sincerely,



John Chevedden

cc: James McRitchie

Russ Elmer <russell.elmer@servicenow.com>

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

ITEM 4* – Special Shareholder Meetings

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

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

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

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

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

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

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



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

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

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 5, 2021

Re: ServiceNow, Inc (NOW) Rebuttal

To Whom It May Concern:

This is in response to a February 1, 2021 letter from Gordon K. Davidson of WilmerHale, acting as an agent of ServiceNow, Inc (NOW). While I am pleased to learn ServiceNow (Company) intends to implement my proposal, in my experience companies send proposed language to proponents asking them withdrawal, rather than wasting the resources necessary for SEC Staff review of an ill-conceived no-action request.

Substantial Implementation Rule 14a-8(i)(10)

According to Mr. Davidson, the proposal may be excluded under rule 14a-8(i)(10) because the Company has substantially implemented the proposal. However, he also notes, “the Board lacks unilateral authority to amend the Certificate of Incorporation under the Delaware General Corporation Law.”

The text has to be submitted to the Company’s shareholders for adoption at the 2021 Annual Meeting. Additionally, “the Company Proposal has not yet been formally approved by the Board.” Therefore, the proposal is far from implemented.

The no-action request does not even include the text of the amendments to be considered by the Board, so we cannot see if the language would substantially implement my Proposal even if it may be subsequently approved by shareholders.

I do not want to do Mr. Davidson’s work for him but, since the Company has so obviously *not* implemented the proposal, a more appropriate argument might be to seek exclusion of my proposal under Rule 14a-8 (i)(9), since what the Company is actually requesting is permission to substitute management’s proposal for my proposal.

Conclusion

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, the Company has failed to meet that burden. Staff must deny the no-action request.

I would be pleased to respond to Staff questions or to negotiate with Disney mutually agreeable terms for withdrawing the Proposal. You can reach me directly by e-mailing jm@corpgov.net.

I would also be happy to review the text of what is to be considered by the Board. If the amendments are indeed as Mr. Davidson represents, I would then withdraw the proposal, contingent upon adoption by the Board for inclusion in the proxy.

Sincerely,


James McRitchie
Shareholder Advocate

cc: Gordon K. Davidson, [gdavidson@fenwick.com](mailto:g davidson@fenwick.com)
Russ Elmer, russell.elmer@servicenow.com
Penelope Bruce, penelope.bruce@servicenow.com

February 1, 2021

VIA E-MAIL

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

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

Ladies and Gentlemen:

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

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

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

SUMMARY OF THE PROPOSAL

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

with the Proponent is attached as Exhibit B hereto.

BASIS FOR EXCLUSION

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

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

ANALYSIS

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

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

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

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

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

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

B. The Company's Proposal Substantially Implements the Proposal

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

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

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

CONCLUSION

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

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

Very truly yours,

Gordon K. Davidson

Gordon K. Davidson

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

Enclosures

Exhibit A

Corporate Governance

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

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

Dear Corporate Secretary,

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

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

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

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

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

Sincerely,


James McRitchie

December 8, 2020

Date

cc: ir@servicenow.com

Penelope Bruce, penelope.bruce@servicenow.com

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

ITEM 4* – Special Shareholder Meetings

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

].

Exhibit B



December 22, 2020

Via Email and Federal Express

John Chevedden

Copy to:

James McRitchie

E-mail:

Dear Mr. Chevedden:

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

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

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

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

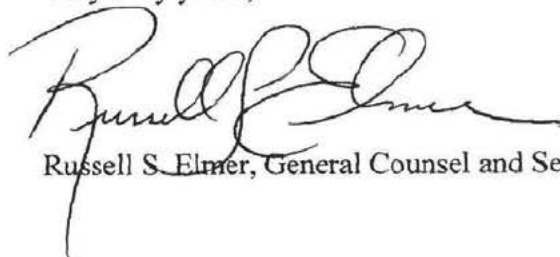
As outlined in SLB 14F, any written statement from a broker or bank must be provided from the DTC participant through which the shares are held. If you are not certain whether your broker or bank is a DTC participant, you may check DTC's participant listing, which is currently available on the Internet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

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

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Russell S. Elmer", written in a cursive style.

Russell S. Elmer, General Counsel and Secretary

§240.14a-8 Shareholder proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) The proposal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Amend §240.14a-8 by:

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

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

iii. Revising paragraph (c); and

iv. Revising paragraph (i)(12).

The revisions and addition read as follows:

§240.14a-8 Shareholder proposals.

* * * * *

(b) * * *

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

(i) You must have continuously held:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* * * * *

(i) * * *

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

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

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

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

* * * * *



12/16/2020

James Mcritchie and Myra Young

Re: Your TD Ameritrade Account Ending in ***

Dear James Mcritchie and Myra Young,

Pursuant to your request, this letter is to confirm that as of the date of this letter, James McRitchie and Myra Young held and had held continuously for at least 13 months, 15 common shares of ServiceNow Inc (NOW) in an account ending in *** at TD Ameritrade. The DTC clearinghouse number for TD Ameritrade is 0188.

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

Sincerely,

Gabriel Elliott
Resource Specialist
TD Ameritrade

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

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

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