

Corporate Governance

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

April 19, 2021

Re: ServiceNow, Inc (NOW) Rebuttal to Request for Reconsideration

To Whom It May Concern:

This is in response to an April 19, 2021 letter from Gordon K. Davidson of WilmerHale, acting as an agent of ServiceNow, Inc (NOW) in which the Company seeks reconsideration of their rejected 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, as he noted previously, “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. Adoption of language by the Board does not change the fact that it has not been approved by shareholders.

Rule 14a-8(i)(10) by its own clear language exempts the requirement to include a proposal that has been “substantially implemented.” Their proposal has not.

As previously mentioned, 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. Of course, then additional arguments would need to be offered. See Staff Legal Bulletin No. 14H (CF).

Slippery Slope

Shareholders should have an “unfettered” right to call special meeting. I borrow my use of the term “unfettered” from Institutional Shareholder Services (ISS) in its US Proxy Voting Guidelines:

"Unfettered" means no restrictions on agenda items, no restrictions on the number of shareholders who can group together to reach the 10 percent threshold, and only reasonable limits on when a meeting can be called: no

greater than 30 days after the last annual meeting and no greater than 90 prior to the next annual meeting.

Adding a one year holding requirement to shareholders calling for a special meeting would fetter shareholders by introducing unnecessary complexity. Obtaining agreement among shareholders with 15% of outstanding shares is a substantial, but reasonable, administrative burden with respect to documenting and verifying the necessary holdings. Throwing in the requirement that shareholders must have held for a year would create an administrative nightmare.

Yes, I understand SEC rules require shareholders to hold shares for a year to submit a shareholder proposal. However, shareholder proposals are typically filed by one person or entity, with others potentially signing on as cosponsors. In contrast, special meetings are typically called by groups of shareholders.

Imagine having to verify not only that a large group of shareholders owns 15% of the Company's shares today but that they did so every day for the past year or more. This is why there have been so few cases of shareholders evoking proxy access. The threshold level of 3% continuously held for three years has been impossible to document by *any* group of shareholders seeking to use proxy access provisions.

Similarly, it would be nearly impossible for any group of shareholders to ever call a special meeting if they must go into the documentation nightmare our Board proposes. Perhaps that is the point. Make it look like shareholders have the right to call a special meeting but make it nearly impossible to actually do so. Shareholder rights should not be bound by unnecessary red-tape. Charter amendments and bylaws should be clear and unambiguous. They should not be used for deceit or illusion.

Abuse of Rule 14a-8

I view the Board's attempt to preempt my proposal by evoking Rule 14a-8(i)(10) as similar to the abuse of Rule 14a-8(i)(9) that led to the reexamination of how that rule was being used.

As you may know, I submitted a proxy access proposal to Whole Foods Market (Whole Foods) asking the board to allow shareholders holding 3% of the shares for a minimum of 3 years to be able to place nominees on the proxy totaling up to 20% of the board. Whole Foods responded with a request to the SEC asking for a no-action letter based on [Rule 14a-8\(i\)\(9\)](#).

They told the SEC they intended to submit a proposal on the same subject but allowing only a single shareholder holding 9% of shares for five years to place the name of one nominee on the proxy. The SEC [granted the no-action](#)¹ and later [rescinded it](#),² following [my appeal](#),³ when Chairwoman White requested a review of the rule. Staff subsequently announced they would not express any views under rule 14a-8(i)(9) for the current proxy season.

¹ <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2014/jamesmccritchie120114.pdf>

² <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2015/jamesmccritchieveddenrecon011615-14a8.pdf>

³ https://www.corpgov.net/2014/12/appeal-no-action-proxy-access-whole-foods-markets-wfm/#_ftn2

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 request for reconsideration.

I see Mr. Davidson respectfully requests “the opportunity to confer with members of the Staff prior to the issuance of any written response” to his letter. If you grant his request, I hope you will also do so for me.

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

Sincerely,

James McRitchie
Shareholder Advocate

cc: Gordon K. Davidson, gdaavidson@fenwick.com
Russ Elmer, russell.elmer@servicenow.com
Penelope Bruce, penelope.bruce@servicenow.com

April 16, 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:

We are writing on behalf of our client ServiceNow, Inc. (the “Company”), in response to a letter dated April 16, 2021 (the “Staff Response Letter”), from the Staff of the Division of Corporate Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”), in which the Staff indicated that it was unable to concur in the Company’s view that, for the reasons stated in our letter dated February 1, 2021 (the “No Action Request”), the shareholder proposal and supporting statement (the “Proposal”) submitted by James McRitchie (the “Proponent”) and his agent John Chevedden (the “Agent”) could be excluded from the Company’s proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the “2021 Proxy Materials”).

The Staff Response Letter stated that the Staff was unable to conclude that the Company had met its burden of establishing that it may exclude the Proposal because the Company’s proposed amendments had not yet been formally approved by the Company’s board of directors (the “Board”) and the Company did not confirm that the Board had formally taken the actions discussed in the No Action Request.

The Company submitted the No Action Request prior to the Board’s approval of the amendments to each of the Certificate of Incorporation and the Bylaws in order to address the timing requirements of Rule 14a-8(j). We are writing to you to confirm that, (1) by vote during a meeting held on April 14, 2021, the Nominating and Governance Committee of the Board recommended to the Board that it approve the amendments to each of the Certificate of Incorporation and the Bylaws and (2) via an action by unanimous written consent dated April 16, 2021, the Board approved the amendments to each of the Certificate of Incorporation and the Bylaws, subject to the approval of the Company’s shareholders at the 2021 Annual Meeting of Shareholders.

In our letter to the Staff dated March 5, 2021, the Company provided draft language for the proposal to amend the Company’s Certificate of Incorporation to provide shareholders with the right to call a special meeting of shareholders (the “Company Proposal”), as well as the corresponding Certificate of Amendment. We are including both of those items here as Exhibit A and Exhibit B, respectively, and confirming that the Company will include the Company Proposal in the 2021 Proxy Materials.

By approving the applicable amendments to each of the Certificate of Incorporation and the Bylaws, subject to the approval of the Company's shareholders at the 2021 Annual Meeting of Shareholders, and in preparing all materials necessary to solicit such shareholder approval at the 2021 Annual Meeting of Shareholders, the Board has, as of April 16, 2021, taken all steps permitted by applicable law to fully implement the Proposal.

Accordingly, we respectfully request that the Staff reconsider its response to our No Action Request and confirm that it will not recommend enforcement action if the Company omits the Proposal from the 2021 Proxy Materials for the additional reasons set forth herein.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its exhibits are being submitted via the Commission's email address, shareholderproposals@sec.gov. A copy of this letter and its exhibits are being sent simultaneously to the Proponent and the Agent. 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.

The Company intends to begin distribution of its 2021 Proxy Materials on or around April 26, 2021. Accordingly, pursuant to Rule 14a-8(j), the No Action Request was submitted not less than 80 days before the Company currently intends to file its 2021 Proxy Materials with the Commission.

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 g davidson@fenwick.com.

Very truly yours,

Gordon Davidson

Gordon K. Davidson

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

Enclosure

EXHIBIT 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.

EXHIBIT 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