

FreightCar America, Inc.  
Form 8-K  
December 17, 2008

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
FORM 8-K  
CURRENT REPORT  
Pursuant to Section 13 or 15(d) of  
the Securities Exchange Act of 1934  
Date of Report (Date of earliest event reported): December 17, 2008  
FREIGHTCAR AMERICA, INC.  
(Exact name of Registrant as specified in its charter)**

**Delaware**  
(State or other  
jurisdiction of  
incorporation)

**000-51237**  
(Commission File Number)

**25-1837219**  
(IRS Employer  
Identification  
Number)

**Two North Riverside Plaza,  
Suite 1250  
Chicago, Illinois**  
(Address of principal executive  
offices)

**60606**  
(Zip Code)

**(800) 458-2235**  
(Registrant's telephone number, including area code)

**N/A**

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Section 5 Corporate Governance and Management**

**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

On December 17, 2008, FreightCar America, Inc. (the Company ) announced that it has appointed Christopher L. Nagel as Vice President, Chief Financial Officer and Treasurer, effective January 14, 2009. Mr. Nagel succeeds Kevin P. Bagby, who resigned from the Company effective November 3, 2008.

Mr. Nagel, 46, joins the Company from The Wallick Companies, a real estate development, construction and management firm, where he was Chief Financial Officer from September 2007 to December 2008. Prior to joining The Wallick Companies, Mr. Nagel spent nine years serving in various senior executive leadership positions at The Scotts Miracle-Gro Company, a manufacturer and distributor of lawn and garden care products. From September 2006 to July 2007, he was Executive Vice President, North American Consumer Business of Scotts. From January 2003 to September 2006, he was Executive Vice President and Chief Financial Officer of Scotts. From 2001 to 2003, Mr. Nagel served as Senior Vice President, North America and Corporate Finance of Scotts, and from September 1998 to August 2001, as Vice President and Corporate Controller.

In connection with Mr. Nagel's appointment, the Company and Mr. Nagel entered into an Employment Agreement (the Agreement ) effective January 14, 2009 (the Effective Date ). The material terms of the Agreement are set forth below, which description is qualified by reference to the provisions of the Agreement attached to this report as Exhibit 10.1. Capitalized terms are as defined in the Agreement.

(i) Term: The Agreement commences on the Effective Date and will expire on the third anniversary of the Effective Date; except that the Agreement will remain in effect from year to year thereafter unless either party gives notice of its intention not to continue the Agreement at least 90 days before the date as of which the Agreement would otherwise terminate, in which case the Agreement will terminate as of the December 31 of the year in which such notice is given.

(ii) Base Salary: The Company will pay Mr. Nagel an initial base salary of \$350,000.

(iii) Bonuses: Mr. Nagel will be eligible for an annual cash bonus based on performance and calculated as a percentage of his base salary. Initially, Mr. Nagel will have the opportunity of a bonus payout equal to 40% of his base salary. The Company will pay Mr. Nagel the bonus at the same time as annual bonus payments are made to other participants, and in all events within 2½ months following the end of the fiscal year in which the bonus is earned.

(iv) Restricted Stock: On the Effective Date, the Company will award Mr. Nagel 10,000 shares of restricted stock in accordance with and subject to the terms of the FreightCar America, Inc. 2005 Long Term Incentive Plan, vesting in three equal annual installments beginning on the first anniversary of the Effective Date. This restricted stock award would become fully vested upon a Change in Control.

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(v) Make Whole Agreement: It is anticipated that as a result of Mr. Nagel terminating his employment with The Wallick Companies ( Wallick ), Wallick may not pay Mr. Nagel an annual incentive bonus for the 2008 calendar year (the Wallick Bonus ). Within 30 days following the date as of which Wallick makes bonus payments for 2008, Mr. Nagel will notify the Company s Chief Executive Officer whether Wallick has paid him the Wallick Bonus. If Mr. Nagel provides a reasonable written certification to the Company that, as a result of his terminating his employment with Wallick, Wallick did not pay him the Wallick Bonus, together with his best good-faith estimate of the amount of the foregone Wallick Bonus, then the Company will pay him such amount within 60 days of receiving such written certification, provided that such amount shall not exceed \$60,000. If, subsequent to the receipt of such amount, Mr. Nagel voluntarily terminates his employment with the Company before December 31, 2009, other than for Good Reason, he must repay such amount to the Company.

(vi) Other Amounts: The Company will reimburse Mr. Nagel s reasonable moving and relocation expenses in relocating to Chicago, Illinois. Until he relocates, the Company will pay or reimburse commuting expenses to the Company s offices. The Company will provide Mr. Nagel with the use of an automobile with lease payments of no more than \$500 per month throughout the term of his employment. Mr. Nagel will be entitled to participate in any employee benefit plan made available by the Company to its executive employees at any time during his employment.

(vii) Termination Payments:

(a) Death or Disability: If Mr. Nagel s employment is terminated due to his death or disability, the Company will pay any earned but unpaid base salary and bonus, any accrued but unpaid vacation, any amounts payable under the Company s employee benefit plans, and any unreimbursed expenses incurred by Mr. Nagel.

(b) For Cause or by Mr. Nagel for Other than Good Reason: If Mr. Nagel s employment is terminated by the Company for Cause or by Mr. Nagel for other than Good Reason, the Company shall pay Mr. Nagel his base salary through the date of termination and any unreimbursed expenses.

(c) By the Company for Cause or by Mr. Nagel without Good Reason: If Mr. Nagel s employment is terminated by the Company for Cause or by Mr. Nagel without Good Reason, the Company will pay any earned but unpaid base salary and bonus, any accrued but unpaid vacation, any amounts payable under the Company s employee benefit plans, and any unreimbursed expenses incurred by Mr. Nagel.

(d) By the Company without Cause or by Mr. Nagel for Good Reason: If the Company terminates Mr. Nagel s employment without Cause, or Mr. Nagel terminates his employment for Good Reason, then the Company will provide the following payments and benefits: (i) the Company will pay Mr. Nagel his base salary through the date of termination and all other unpaid amounts to which he is entitled as of the date of termination, including unpaid but accrued vacation and benefits payable; (ii) the Company shall pay Mr. Nagel s base salary for 12 months following the date of termination (or 24 months if Mr. Nagel terminates his employment for Good Reason after a Change in Control); (iii) the Company will pay Mr. Nagel s target bonus for the year of termination (or two times the target bonus if Mr. Nagel terminates his

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employment for Good Reason after a Change in Control); and (iv) the Company shall make available continued participation in the Company's group health benefit plan to Mr. Nagel and such members of his family who participated in the group health plan at the time of his termination, for a period of 12 months (or 24 months if Mr. Nagel terminates his employment for Good Reason after a Change in Control).

**Section 9 Financial Statements and Exhibits**

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

Exhibit 10.1 Employment Agreement effective January 14, 2009 by and between FreightCar America, Inc. and Christopher L. Nagel

Exhibit 99.1 Press Release of FreightCar America, Inc. dated December 17, 2008

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**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**FreightCar America, Inc.**

Date: December 17, 2008

By: /s/ Laurence M. Trusdell  
Name: Laurence M. Trusdell  
Title: General Counsel and Corporate  
Secretary

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**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description</b>
Exhibit 10.1	Employment Agreement effective January 14, 2009 by and between FreightCar America, Inc. and Christopher L. Nagel
Exhibit 99.1	Press Release of FreightCar America, Inc. dated December 17, 2008

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(4)  
 \$66.65  
 (5)  
 \$99,647,748.50  
 (5)  
 \$11,579.07  
 (5)  
 TOTAL  
 8,970,544

N/A  
 \$685,798,096.64  
 \$79,689.74

- Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the “Securities Act”), this Registration Statement shall also cover any additional shares of the Registrant’s Common Stock that become issuable in respect
- (1) of the securities identified in the above table by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant’s receipt of consideration which results in an increase in the number of the outstanding shares of the Registrant’s Common Stock.
  - (2) Represents shares reserved for issuance under the 2012 Equity Incentive Plan as of the date of this Registration Statement.  
 Estimated pursuant to Rules 457(c) and (h) of the Securities Act, solely for purposes of calculating the registration fee, on the basis of the average of the high and low prices of the Registrant’s Common Stock as reported on the New York Stock Exchange on February 20, 2015.
  - (3) Represents shares reserved for issuance under the 2012 Employee Stock Purchase Plan as of the date of this Registration Statement.  
 Estimated pursuant to Rules 457(c) and (h) of the Securities Act, solely for purposes of calculating the registration fee, on the basis of the average of the high and low prices of the Registrant’s Common Stock as reported on the New York Stock Exchange on February 20, 2015. In the case of the 2012 Employee Stock Purchase Plan, this price per share is multiplied by 85%, which is the percentage of the price per share applicable to purchases under the 2012 Employee Stock Purchase Plan.
  - (4)
  - (5)





REGISTRATION OF ADDITIONAL SHARES  
PURSUANT TO GENERAL INSTRUCTION E

Pursuant to General Instruction E of Form S-8, ServiceNow, Inc. (the “Registrant”) is filing this Registration Statement with the SEC to register 7,475,454 additional shares of Common Stock under the Registrant’s 2012 Equity Incentive Plan and 1,495,090 additional shares of Common Stock under the Registrant’s 2012 Employee Stock Purchase Plan, pursuant to the provisions of those plans providing for an automatic increase in the number of shares reserved for issuance under such plans. This Registration Statement hereby incorporates by reference the contents of the Registrant’s registration statement on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on June 29, 2012 (Registration No. 333-182445), the Form S-8 filed with the Commission on May 8, 2013 (Registration No. 333-188462) and the Form S-8 filed with the Commission on February 28, 2014 (Registration No. 333-194210). In accordance with the instructional note to Part I of Form S-8 as promulgated by the Commission, the information specified by Part I of Form S-8 has been omitted from this Registration Statement.

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PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

the Registrant's Annual Report on Form 10-K (Registration No. 001-35580) for the fiscal year ended December 31, (a) 2014 filed with the Commission on February 27, 2015 pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the "Exchange Act");

(b) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant's Annual Report referred to in (a) above; and

the description of the Registrant's Common Stock contained in the Registrant's Registration Statement on Form 8-A (c) (Registration No. 001-35580) filed with the Commission on June 19, 2012 pursuant to Section 12(b) of the Exchange Act, including any amendments or reports filed for the purpose of updating such description.

All reports and definitive proxy or information statements filed by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the filing of this Registration Statement and prior to the filing of a post-effective amendment that indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of the filing of such documents, except as to documents or information deemed to have been furnished and not filed in accordance with the rules of the Commission. Unless expressly incorporated into this Registration Statement, a report furnished on Form 8-K prior or subsequent to the date hereof shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement.

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Item 8. Exhibits.

Exhibit Number	Exhibit Description	Incorporated by Reference			Filing Date	Filed Herewith
		Form	File No.	Exhibit		
4.1	Restated Certificate of Incorporation of the Registrant, as currently in effect.	10-Q	001-35580	3.1	8/10/2012	
4.2	Restated Bylaws of the Registrant, as currently in effect.	8-K	001-35580	3.1	12/10/2014	
4.3	Form of Common Stock Certificate.	S-1/A	333-180486	4.1	6/19/2012	
5.1	Opinion and Consent of Fenwick & West LLP.					X
23.1	Consent of PricewaterhouseCoopers LLP, independent registered public accounting firm.					X
23.2	Consent of Fenwick & West LLP (contained in Exhibit 5.1).					X
24.1	Power of Attorney (included on the signature page of this Registration Statement).					X
99.1	2012 Equity Incentive Plan and Forms of Stock Option Award Agreement, Restricted Stock Agreement, Stock Appreciation Right Award Agreement and Restricted Stock Unit Award Agreement thereunder.	S-1/A	333-180486	10.3	6/19/2012	
99.2	Form of Stock Option Award Agreement and Restricted Stock Unit Award Agreement under 2012 Equity Incentive Plan adopted as of January 27, 2015.	10-K	001-35580	10.4	2/27/2015	
99.3	2012 Employee Stock Purchase Plan and Form of Subscription Agreement thereunder.	10-K	001-35580	10.4	3/8/2013	
99.4	Form of Subscription Agreement under 2012 Employee Stock Purchase Plan adopted as of January 27, 2015.	10-K	001-35580	10.6	2/27/2015	

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Diego, State of California, on this 27th day of February, 2015.

ServiceNow, Inc.

By: /s/ Frank Sloodman  
Frank Sloodman  
President and Chief Executive Officer

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Frank Sloodman and Michael P. Scarpelli, and each of them, as his true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him and in his name, place or stead, in any and all capacities, to sign any and all amendments to this registration statement (including post-effective amendments) to this Registration Statement on Form S-8, and to file the same, with all exhibits thereto and documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

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Signature	Title	Date
/s/ Frank Slooman Frank Slooman	President, Chief Executive Officer and Director (Principal Executive Officer)	February 27, 2015
/s/ Michael P. Scarpelli Michael P. Scarpelli	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	February 27, 2015
/s/ Frederic B. Luddy Frederic B. Luddy	Chief Product Officer and Director	February 27, 2015
/s/ Paul V. Barber Paul V. Barber	Director	February 27, 2015
/s/ Susan L. Bostrom Susan L. Bostrom	Director	February 27, 2015
/s/ Ronald E.F. Codd Ronald E. F. Codd	Director	February 27, 2015
/s/ Charles Giancarlo Charles Giancarlo	Director	February 27, 2015
/s/ Douglas M. Leone Douglas M. Leone	Director	February 27, 2015
/s/ Jeffrey A. Miller Jeffrey A. Miller	Director	February 27, 2015
/s/ Anita M. Sands Anita M. Sands	Director	February 27, 2015
/s/ William L. Strauss William L. Strauss	Director	February 27, 2015

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