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February 23, 2022

Via email: rule-comments@sec.gov

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Request for Comment on Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes
File Number S7-12-21

Dear Ms. Countryman:

Orrick, Herrington & Sutcliffe LLP ("**Orrick**") hereby submits this letter in response to the request for public comments by the Securities and Exchange Commission (the "**Commission**") to the Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes (the "**Proposed Changes**").

We commend the Commission's efforts to enhance the security of EDGAR, improve the ability of filers to securely maintain access to their EDGAR accounts, facilitate the responsible management of EDGAR filer credentials, and simplify procedures for accessing EDGAR. We believe, however, that the Proposed Changes' creation of a new position of filer administrator would be overly burdensome on individual filers.

Filings on EDGAR are not currently linked to specific authorized individuals, but rather are associated with the filer's central index key ("**CIK**"). In order to obtain a CIK, a prospective filer must complete an application for EDGAR access codes ("**Form ID**") on the EDGAR Filer Management website and submit a notarized copy of such application, which must be signed, in the case of an individual filer, by either the individual filer or a person with a power of attorney ("**POA**") from the individual filer or, in the case of an entity filer, an individual authorized by the entity filer. If such application is approved, the contact person listed on the Form ID receives a CIK, an EDGAR password, CIK code, password modification authorization code ("**PMAC**"), and passphrase (collectively, the "**EDGAR Codes**"). These EDGAR Codes may then be used by anyone the filer provides such codes to in order to file reports on the filer's behalf.



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The Proposed Changes would do away with the EDGAR password, PMAC and passphrase, and instead require an individual filer to designate one or more filer administrators, who may then authorize other users to file on behalf of the filer. Each entity filer must have at least two filer administrators, and each individual filer must have at least one filer administrator.

The Proposed Changes would also require filer administrators to review and reconfirm permissions granted on behalf of a filer annually. If a filer administrator fails to timely confirm permissions for each filer administrator, the entire Form ID application would have to be re-submitted, which includes a notarized manual execution of the Form ID application.

We believe this proposed process will create an unnecessary administrative burden on directors and executive officers of the companies we represent. Many of the members of boards of directors of our public company clients serve on multiple public company boards of directors, and therefore, have reporting obligations under Section 16 of the Exchange Act of 1934 for multiple companies (we refer to persons who are subject to these obligations as “**Section 16 Filers**”). In addition to this board service, many of the directors at our clients’ companies serve as “executive officers” of other public companies, making them Section 16 Filers for that purpose as well. Similarly, many of the executive officers of our public company clients also serve as members of the boards of directors of one or more other public companies.

In the vast majority of instances, these Section 16 Filers do not currently file their own Section 16 reports. They are instead filed internally at each company where the Section 16 Filer serves as an executive officer or director, or by an outside law firm (like Orrick) representing such a company. This is possible because, under current practice, filings on EDGAR are not currently linked to a specific authorized individual, but rather are associated with the filer’s EDGAR Codes, which may be shared with legal personnel for each company. Section 16 Filers generally provide a member of each company’s legal department with their applicable EDGAR Codes, and a POA, to facilitate timely filing of Section 16 forms on their behalf. The Section 16 process at most companies is designed to take the administrative burden of managing these filings off of the Section 16 Filer, who is often a busy executive with multiple roles or a full-time director serving on multiple company boards.

The Proposed Changes would introduce substantial complexity and administrative burden for such Section 16 Filers. For example, a Section 16 Filer who serves as an executive officer of a public company and also serves on the boards of directors of two different public companies may wish to appoint no fewer than *six* filer administrators. To ensure timely filing of Section 16 filings for each company with which the filer is affiliated, and to avoid requiring different companies to coordinate with one another to plan filings and other matters, this Section 16 Filer would have to designate at least one individual at each company as a filer administrator. To



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mitigate against potential employee turnover, moreover, the Section 16 Filer would be well served to have *two* filer administrators at each company.

With so many filer administrators, however, it is unrealistic to believe that the Section 16 Filer would be directly in control of the process. Section 16 Filers are unlikely to know each of these filer administrators personally, and may not be able to effectively track whether these filer administrators are still in their roles and are suitable to continue to act as filer administrators.

In addition, the Proposed Changes' requirement that the filer administrator annually review the permissions of the Section 16 Filer's EDGAR profile as well as the EDGAR profile of each filer administrator authorized on the Section 16 Filer's behalf would require that at least one filer administrator be aware of all of the other filer administrators at each company and whether they are suitable to continue in their roles, and to actively renew the filer's account each year. Failure to do so would result in the Section 16 Filer having to begin the Form ID process again. This requirement puts a burden on the Section 16 Filer to facilitate coordination amongst filer administrators at different companies, and to ensure that at least one of them performs this task on behalf of the group.

In light of the above considerations and the concerns expressed by our clients, we would ask that the Commission reconsider the approach taken in the Proposed Changes.

One possible alternative would be the "*Company Specific Account*" approach outlined in the comment letter submitted by McGuire Woods, LLP and Brownstein Hyatt Farber Schreck, LLP on December 1, 2021. The Company Specific Account would allow each company for which an individual filer is a Section 16 Filer to manage that Section 16 Filer's filings through an attorney-in-fact appointed via a POA. Each company would then be responsible for ensuring that it has maintained the ability to file through keeping its account updated with the appropriate permissions, rather than placing that responsibility on the Section 16 Filer.

Companies have every incentive to properly file Section 16 filings on behalf of their Section 16 Filers, including in order to avoid disclosure of delinquent filings in the company's proxy statement for their annual shareholder meeting. The legal departments of the companies for which the Section 16 Filers serve as directors or executive officers can therefore be trusted to file accurately and only as authorized by the Section 16 Filers, just as they are authorized to file financial statements on behalf of the company itself.

Additionally, this approach would address the security concerns raised in the Proposed Changes since the Company Specific Account would be subject to the multifactor authentication and other security requirements suggested in the Proposed Changes.



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However, we also recognize that the Company Specific Account approach is one possible alternative to the Proposed Changes and that some companies may not want to undertake such responsibilities. Therefore, we are not recommending that the Commission require filers and their related companies to take the Company Specific Account approach, but rather that this approach be available to filers, subject to agreement from their respective companies.

We are grateful for the opportunity to provide you with our comments, and we appreciate your consideration of this topic. Please do not hesitate to reach out if you would like to discuss our comments further.

Sincerely,

/s/ Orrick, Herrington & Sutcliffe LLP

ORRICK, HERRINGTON & SUTCLIFFE LLP

cc: JT Ho
Carolyn Frantz
Soo Hwang