

December 1, 2021

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
File Number S7-12-21

Re: Request for Comment on Potential Technical Changes to EDGAR Filer Access and Filer Account Management Processes

Dear Madam:

McGuireWoods, LLP and Brownstein Hyatt Farber Schreck, LLP hereby submit 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 “**Potential Access Changes**”). Our comments specifically address the need for Company Specific Accounts (as defined below), the annual confirmation requirement and extended transition period under the Potential Access Changes solely with respect to individual filers only.

I. Companies Should be Permitted to Create and Manage an Individual Filer’s Company Specific Account with a New or Existing POA.

We appreciate the Commission’s efforts in improving and simplifying procedures for accessing EDGAR and maintaining EDGAR accounts. However, the Potential Access Changes add complexity to an already cumbersome process, particularly for individual filers who serve as non-employee directors for multiple companies or that may be Section 16 officers for one company but who also serve as non-employee directors of unrelated companies. Essentially, the Potential Access Changes add additional and new log-in requirements that would require covered individuals to create new user account credentials and grant permission to filer administrators. We appreciate the Commission’s willingness to reexamine the EDGAR system and believe this presents the Commission with an opportunity to address a common area of concern for both issuers and Section 16 officers and directors.

Currently, individual filers each have a central index key (“**CIK**”) and central index key confirmation code (“**CCC**”) that is unique to the individual, rather than unique to the companies in which the individual serves. Further, as the Commission correctly noted, “[f]ilings on EDGAR are not currently linked to a specific authorized individual, but rather associated with the CIK

generally.”¹ The current process is confusing and administratively burdensome for the individuals, most of whom are completely unfamiliar with the specifics of the EDGAR filing system. Moreover, it presents difficulties for individuals who are assigned, by issuers, to assist and facilitate Section 16 filings.

Specifically, under the current system, we commonly see issuers grapple with the following types of time-consuming and labor intensive issues:

- Assisting individuals with obtaining their CIK and CCC codes, frequently by spending one-on-one time walking the individual through each step of the process.
- Helping individuals locate and/or update passwords that have been forgotten, which can be difficult if password reset emails are sent to an old email address that is no longer used by the individual (*e.g.*, a former CEO’s may have an old work email address in the system and the individual now serves as a non-employee director).
- Addressing filing complications that may arise when multiple issuers attempt to file on behalf of an individual at the same time (*e.g.*, two unrelated issuers each filing a Form 4 for an individual who serves as a non-employee director to each of the issuers).

When considering the Potential Access Changes, we recommend the Commission allow the issuer for which the individual serves as a non-employee director or a Section 16 officer (the “**Company**”) to create and manage the individual’s “Company Specific Account,” through the third-party service provider. The Company would only be able to create and manage a Company Specific Account through the proper execution of a notarized Power of Attorney (“**POA**”). Currently, the Commission “permit[s] a person with a [POA] from an individual filer to sign the Form ID application for the individual filer.”² And as a general practice, many individuals have already signed a POA upon their appointment which allows the attorney-in-fact to sign and/or prepare documents on the individual filer’s behalf³ through a specified period.⁴ The attorney-in-fact should then be permitted to create and manage the Company Specific Account on behalf of the individual filer, upon the filing of either a new or existing POA. This account would then be created and managed by the Company in a similar manner as prescribed under the Potential Access Changes (*i.e.*, creating company specific account credentials and enabling multifactor authentication).

To illustrate this Company Specific Account concept, assume Joe Smith serves on the Board of Directors for (1) ABC, Inc. and (2) XYZ, Inc. Under our recommendation, Joe Smith would have two separate company specific accounts: (1) Joe Smith for ABC, Inc. and (2) Joe

¹ See SEC Request for Comment on Potential Technical Changes to EDGAR Filer Access and Filer Account Management Process, [Release Nos. 33-10993; 34-93204; 39-2541; IC-34392; File No. S7-12-21], 4 (“SEC Request for Comment”).

² *Id.* at 3.

³ Please note, we are not proposing any changes to Section 16 obligations and liability that currently rest on directors and officers.

⁴ For example, a director’s POA is generally through the end of such director’s term on the board.

Smith for XYZ, Inc. Upon the proper execution of either a new or existing POA, the Joe Smith for ABC, Inc. company specific account is created and managed by ABC, Inc. and the Joe Smith for XYZ, Inc. company specific account is created and managed by XYZ, Inc.

In addition, we recommend the Commission include a “grandfathering” concept that will allow issuers who currently have existing POAs with their Section 16 officers and directors, with respect to their filings, to rely on such POAs to create these new Company Specific Accounts on behalf of filers without having to obtain new approvals or consents. Or, at a minimum, allow issuers to utilize a “negative consent” framework such that the issuer will be deemed to have authority to create the new Company Specific Account absent express objection by the officer or director following a reasonable period (*e.g.*, 30 days advance notice).

II. The Commission Should Remove Any Annual Requirement for Individual Filers to Maintain Their Access.

Currently, a filer is required to update their EDGAR password annually, otherwise the filer’s password expires, and their access is deactivated.⁵ The Potential Access Changes alleviates this annual password update for filers, but still requires an “annual confirmation of permissions on the filer management tool,”⁶ otherwise the filer’s access is deactivated. Under both the current and Potential Access Changes, any annual requirement and subsequent process for reactivated is extremely cumbersome for filers.

We believe the Commission should remove any annual requirement. Rather, a filer’s confirmation of permissions should be satisfied upon the individual filer or attorney-in-fact accessing the account, as either the individual filer or attorney-in-fact will have accessed the EDGAR account at least annually to make the necessary filings. In circumstances where the attorney-in-fact is primarily accessing the account, the individual filer would still have access to the filer management tool and be able to (1) confirm the accuracy of permissions, (2) become aware of who is making EDGAR submissions on its behalf, and (3) update information about users no longer associated with the filer.⁷ It is unnecessary and burdensome to make this an annual requirement when the filer is able to perform this task when it deems necessary.

III. The Commission Should Allow At Least Twelve Months to Transition Individual Filer Accounts Under the Potential Access Changes.

Under the Potential Access Changes, the Commission is recommending that this transition occur “over a six month period, likely beginning in spring 2022.”⁸ We believe, however, that the Commission should allow **at least** twelve months for individual filers to transition their accounts

⁵ SEC Request for Comment at 11.

⁶ *Id.*

⁷ *Id.* “EDGAR would notify filer administrators to access the EDGAR Filer Management Website to review the list of the filer’s users, including other filer administrators, and annually confirm on the filer management tool the accuracy of the permissions of those authorized to file on behalf of the filer. EDGAR would also notify each user to confirm annually the user’s permissions. The annual confirmation of permissions would help the filer remain aware of who makes submissions on EDGAR on its behalf and provide an opportunity to update information about users no longer associated with the filer or no longer authorized to file on its behalf.”

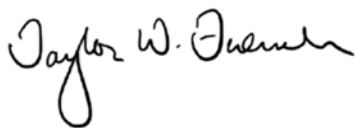
⁸ SEC Request for Comment at 12.

under the Potential Access Changes. In order to “transition accounts,” the Potential Access Changes requires each filer to: (1) create new individual user account credentials, (2) enable multifactor authentication, and (3) designate a “filer administrator” – all on a new third-party service provider’s format. The prospective filer administrator would then be required to obtain account credentials from the third-party service provider in order to access Form ID. Additionally, in the event the prospective filer administration is a third-party, a new notarized POA from an authorized individual filer is required.

While we appreciate the Commission’s efforts to provide secure access to EDGAR accounts, a six-month period does not provide the vast number of individuals⁹ adequate time to transition their accounts. This process will be even more challenging and time-consuming for individual filers who are non-U.S. residents and companies who may have Section 16 officers and/or directors who are not physically located in the United States. Thus, the Commission should allow at least twelve months for individual filers to transition their accounts.

Closing

We would like to thank you for the opportunity to provide you with our comments. We welcome the opportunity to further discuss the concerns and recommendations set forth in this letter and hope that we can be a resource to the Commission as you review and consider all of the comments. If you have any questions, please do not hesitate to contact Taylor Wedge French at [REDACTED] or Rosemary Becchi at [REDACTED].



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⁹ *Id.* As the Commission correctly notes, “[t]here are approximately 180,000 EDGAR filer accounts in which a filing has been made in the last two years, approximately 115,000 of which represent filing entities and approximately 65,000 of which represent individual filers.”