



November 17, 2023

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *EDGAR Filer Access and Account Management; File No. S7-15-23*

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to submit this comment letter to the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) on the Commission’s proposal to make certain updates to its EDGAR Filer Access and Account Management system (“Proposal” or “EDGAR Next”).² The Commission is proposing to (1) require that electronic filers (“filers”) authorize and maintain designated individuals as account administrators and that filers, through their account administrators, take certain actions to manage their accounts on a dashboard on EDGAR, (2) require filers to only authorize individuals as account administrators or in the other roles described in the Proposal if those individuals first obtain individual account credentials in the manner to be specified in the EDGAR Filer Manual, and (3) offer filers optional Application Programming Interfaces (“APIs”) for machine-to-machine communication with EDGAR, including submission of filings and retrieval of related information.

Subject to our comments below, SIFMA supports the proposed updates to the EDGAR system. We support the security enhancements contemplated by the Proposal, including the proposed changes designed to eliminate the sharing of access credentials at EDGAR filing firms. SIFMA members also appreciate the efforts that have been made to give users a practical understanding of the new process set forth in the Proposal through the beta test environment and have been actively testing since the beta environment opened to prepare for the proposed changes and to enable informed comments on the Proposal.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

² See Release No. 33-11232 (September 13, 2023), 88 FR 65524 (September 22, 2023).

Our sole substantive comment on the Proposal, described in more detail below, is that the proposed transition process is much too short and could result in SIFMA members being unable to support filing Form 144s electronically via EDGAR Next on behalf of their clients, which would be a significant disruption given that those clients often do not have experience making these filings themselves. We also recommend in this comment letter certain enhancements to the functionality of EDGAR Next that we believe would greatly enhance the usability of the system for entities like SIFMA members that are bulk EDGAR filers of Form 144s.

I. Background

As we noted in our comment letter on the Commission's December 2020 proposal to mandate the electronic filing of Form 144s, SIFMA member broker-dealers file the majority of Form 144s that the Commission receives.³ SIFMA members frequently have clients who are corporate executives and other affiliates that are required to file Form 144s. Very often, the firms file Form 144s for these clients as a client service offering. While the obligation to file a Form 144 ultimately is on the affiliate, the experience of our member firms is that affiliates subject to Form 144 filing obligations who are clients of brokerage firms have relied on the firms to handle these filings for them, as the brokers are better positioned to make same-day filings and have a shared interest in the Form 144 being timely filed. After the Commission adopted the requirement to electronically file Form 144s in June 2022, which became effective in April 2023,⁴ SIFMA members established processes and procedures to file the forms electronically on behalf of clients. Thus, SIFMA members continue to be significant users of the EDGAR system.

We also noted in that comment letter that some brokerage firms providing Form 144 filing services to clients operate a centralized process for filing the forms on behalf of clients. They use a centralized group at the firm to populate the forms and submit them to the SEC, employing a batch process in which the forms to be submitted on a day are submitted in bulk to the SEC. Other firms providing this service operate a more decentralized process for filing Form 144s in which the firms allow branches and financial advisers at those branches to submit filings after a centralized review and approval of the filings. These different methodologies have persisted after the SEC adopted the requirement to file Form 144s electronically in June 2022.

II. Discussion

A. Proposed Transition Process

Under the Proposal's transition process, we understand that that there would be a one-month period after the Proposal's adoption in which enrollment in the new EDGAR Next access process would be optional. After that one-month period, there would be a six-month period in which new EDGAR filers would be required to enroll in the new EDGAR Next access process ("Enrollment Period"), while existing EDGAR filers could continue to use the legacy EDGAR access process. After this six-month Enrollment Period, the EDGAR Next system would go-live and all filers would be required to access EDGAR through the new EDGAR Next process.

³ See (<https://www.sec.gov/comments/s7-24-20/s72420-8530175-230264.pdf>). As indicated in our comment letter, SIFMA members filed approximately two-thirds of the Form 144s submitted to the Commission in 2020.

⁴ See Release No. 33-11070 (June 2, 2022), 87 FR 35393 (June 10, 2022).

SIFMA strongly urges the Commission to modify the proposed transition process in the manner described below. Under the proposed process, SIFMA members that are EDGAR filers would have one month to establish processes and procedures to access EDGAR through EDGAR Next on behalf of hundreds and in some cases thousands of clients that are EDGAR filers. This is an extremely short period of time for bulk EDGAR filers such as SIFMA members to stand up new processes and procedures for EDGAR Next. For such SIFMA members, this would include creating new infrastructure for connecting to EDGAR, including establishing at least two account administrators at the firms and then authorizing those firm employees who make EDGAR submissions on behalf of clients to have EDGAR access through EDGAR Next either as “account administrators” or “users.”⁵ It would also include outreach and coordination with clients so that the firms are appropriately delegated filing authority by those clients. In addition, as contemplated by EDGAR Next, it could include establishing access to EDGAR in a bulk, API manner to allow the firms to manage the hundreds or thousands of filings they make on behalf of clients each year, as well as setting up “technical administrators” at the firms to manage that access.⁶ Because SIFMA members are broker-dealers, they also would need to draft and adopt corresponding policies and procedures under FINRA rules to manage the process of accessing EDGAR through EDGAR Next on behalf of client filers.

SIFMA members can say with experience that one month is not enough time to accomplish all of these tasks. Specifically, the transition period for compliance with the electronic filing requirements for Form 144 was six months after the filing requirements were published in the EDGAR Filing Manual. SIFMA members needed to use that entire time period to build, test, and deploy technology and infrastructure, as well as coordinate with clients to collect documentation and filing credentials, to be able to comply with those requirements.⁷

⁵ Under the Proposal, an “account administrator” is defined as “an individual that the electronic filer authorizes to manage its EDGAR account and to make filings on EDGAR on the electronic filer's behalf.” In addition, a “user” is defined as “an individual that the electronic filer authorizes on the dashboard to make submissions on EDGAR on the electronic filer's behalf.”

⁶ Under the Proposal, a “technical administrator” is defined as “an individual that the electronic filer authorizes on the dashboard to manage the technical aspects of the electronic filer's use of EDGAR Application Programming Interfaces on the electronic filer's behalf.”

⁷ See supra note 4. In the adopting release to require the electronic filing of Form 144s, the Commission stated that:

In response to the comment requesting a longer transition period to allow a firm to collect EDGAR filing credentials from its Form 144 filing clients and to establish adequate new processes governing the filing of the forms and the maintenance of EDGAR credentials, we are adopting a longer transition period than what we proposed for when filers will be required to file Forms 144 on EDGAR for sales of securities of issuers subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. Specifically, the requirement to file Form 144 electronically on EDGAR will commence six months from the date of publication in the Federal Register of the Commission release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144. We currently expect that the Commission would consider adoption of the relevant version of the EDGAR Filer Manual addressing updates to Form 144 in September 2022, and publication in the Federal Register would occur thereafter. We believe this extended transition period will provide sufficient time for broker-dealers to transition clients for whom they prepare and submit Form 144 filings, including time for those clients who do not currently have access to EDGAR to apply for EDGAR access. (footnotes omitted)

Moreover, after this initial one-month period, the proposed transition process would require SIFMA member filers to maintain two completely different access processes to file with EDGAR during the six-month Enrollment Period. This would mean, for example, that firms would need to handle EDGAR filings of similarly situated clients differently depending on when they were required to file with EDGAR. It would also mean that firms would need to maintain separate records and processes for such clients. We believe that the proposed six-month Enrollment Period unnecessarily complicates the process of establishing access to EDGAR through EDGAR Next for bulk filers such as SIFMA members.

We therefore recommend that filers be given at least six months following the adoption of the rule before enrollment in the new EDGAR Next access process is required for all filers, including filers who establish EDGAR profiles during this six-month period. This would provide SIFMA member filers with time to establish new infrastructure and processes and procedures to be in a position to access EDGAR through EDGAR Next. It would also provide SIFMA members with time to work with clients to allow them to delegate to SIFMA members the authority to continue to file on their behalf, while also eliminating the need to maintain two separate filing systems to accommodate new and existing EDGAR filers. A six-month transition period is consistent with the transition period that was used to require electronic filing of Forms 144, as noted above.

In the alternative, if the SEC needs a period in which the legacy and new EDGAR Next access processes are required to operate concurrently, we recommend that the SEC adopt our recommendation above in which SIFMA member filers would have at least six months following the adoption of the rule to establish new infrastructure and process and procedures to access EDGAR through EDGAR Next. After this six-month period, we recommend that there be a three-month period in which both the legacy and EDGAR Next access processes would operate concurrently, after which use of the new EDGAR Next access process would be required. Like our recommendation above, we believe that such a staggered implementation process would lead to a much smoother roll-out of the new EDGAR Next access process.

B. EDGAR Next System Enhancements

SIFMA member filers greatly appreciate the opportunity to test and use the EDGAR Next access functionality in the beta test environment. Among other things, this testing has allowed firms to become more familiar with the new access process. As members have experimented in the test environment, they have become aware of ways in which they believe the new EDGAR Next access process could be enhanced to significantly increase its usability for bulk filers such as SIFMA members, ensure timely and accurate filings by SIFMA members on behalf of filers, and promote overall stability of the EDGAR system. Our recommendations are set forth below.

1. Access Delegation

SIFMA member filers are most concerned about the process by which they would be delegated the authority to file on behalf of clients. They are particularly concerned about how clients - many of whom have limited compliance and technical resources and are unlikely to be following the Proposal or the Proposal's potential effect on their relationship with brokerage firms - would authorize them to electronically file Form 144s on the clients' behalf under the

new EDGAR Next access process. Firms are concerned that it could be a lengthy and potentially challenging process to get certain clients to delegate access to their broker-dealer filing agents. They also are concerned about the process of getting certain clients to perform their annual account confirmation, which will impact the delegation of filing authority to SIFMA members.

To address these potential hurdles, we recommend that the system permit filing agents such as SIFMA members to affirmatively request delegated authority (on an individual or bulk basis) from a given filer or filers. This would make the process of seeking delegation from clients much more efficient and increase the likelihood that a filing agent will have the appropriate delegation when needed (i.e., in connection with a Rule 144 sale). It would also serve to protect client filers because it would provide them with the opportunity to reject the request if they no longer want a filing agent to file on their behalf or do not recognize the request. In the event that an API is not available at the time EDGAR Next is launched, SIFMA members likely will build proprietary tools to confirm their delegation status through test filings which, while permitted, would be burdensome and suboptimal from a platform perspective when considering the thousands of test filings that would be made.

With regard to SIFMA members that submit Form 144s on a centralized basis, they also are concerned that the new EDGAR Next access functionality does not seem designed to allow them to manage client delegation on a large-scale and automated basis. As noted, some SIFMA member filers may have hundreds or even thousands of clients that would need to go through this delegation process. However, based on member beta testing, delegated agents can see which filers have granted authority, but there is no systematic way to be able to check day to day whether any filer has rescinded authority. In this regard, it is important to be able to have an API to pull that information so that delegated agents can quickly identify filers who have rescinded authority and determine if there should be engagement with that filer to confirm that the rescission was intended, and, if so, determine the consequences of the rescission.

As one way of supporting large-scale and more automated filing activity, we recommend that the SEC introduce a delegation API that would allow SIFMA members acting as delegated agents to be able to systematically manage filers that have granted them filing authority. We suggest that such an API allow a SIFMA member filer to:

- Retrieve a list of delegating filers;
- Retrieve delegation invites;
- Send delegation requests;
- Accept/Decline delegation invites;
- Verify good/bad delegation status;
- Retrieve central index key confirmation code (“CCC”) from delegating filer accounts; and
- Retrieve Annual Confirmation status and renewal date for delegating filers.

In addition to being very useful for SIFMA member filers, we believe that such an API would further the SEC’s goals of facilitating the responsible management of filer credentials and simplifying procedures for accessing EDGAR. In this regard, it would allow such SIFMA members to manage client delegation on a more automated basis, thus promoting greater efficiency in the EDGAR filing process.

During beta testing, SIFMA member filers also identified certain areas in which they believe the Filer Management website can be improved. We recommend the following enhancements to the Filer Management website in which filing agents be provided with the ability to:

- View all delegates in a single page (the current implementation only shows up to 100 at a time);
- Export the full list of delegates to an Excel or CSV file; and
- Request delegation authority from a filer using a single CIK or a data file containing multiple CIKs.

We similarly believe that such enhancements would significantly aid in delegation management, which would foster the SEC's goals of facilitating the responsible management of filer credentials and simplifying procedures for accessing EDGAR.

Based on beta testing, SIFMA member filers also have learned that a filer's CCC is needed to complete a filing. Members understand that a delegated agent sees the filer's CCC when they are granted authority by the filer and then needs to use the CCC when completing a filing on the filer's behalf. However, it would seem that by granting authority to the agent through EDGAR Next, there would not be a need for the CCC. In fact, we understood that one of the reasons for transition to EDGAR Next was to eliminate the need to share CCCs with third parties. We therefore recommend that the SEC eliminate the need to use CCCs when filing given that evidence of authority would be apparent through the actions of the filer in EDGAR Next.

However, if CCCs are required for some reason, we would request that the SEC develop the capability to allow delegated filers access filer CCCs, and confirm that they are current, through an API (such functionality would be consistent with our recommendation above regarding a delegation API). Rather than having filing agents manually obtain, or build tools to systematically scrape, CCCs from the portal, we believe that being able to pull that information from EDGAR Next via an API would be less burdensome and reduce the risk of error.

With regard to SIFMA members that file Form 144s on a more decentralized basis, in addition to the retail client designating the broker-dealer as a "delegated entity," we recommend that the SEC provide functionality that would allow retail clients to directly authorize their financial advisers (i.e., registered representatives of the broker-dealer) to act as a "user" for the sole purpose of filing the Form 144s.⁸ As noted, certain firms have processes in which they authorize branches and financial advisers at those branches to submit filings after a centralized review and approval of the filings. Our recommendation here would allow the financial adviser

⁸ Under the Proposal, a "delegated entity" is defined as "means an electronic filer that another electronic filer authorizes, on the dashboard, to file on EDGAR on its behalf. Delegated entities must themselves be electronic filers and must follow all rules applicable to electronic filers. Delegated entities are not permitted to further delegate authority to file for a delegating electronic filer, nor are they permitted to take action on the delegating electronic filer's dashboard."

of the retail customer to view the filer dashboard information to support the filing. With reasonable supervisory routines in place, we believe that this additional functionality could accommodate SIFMA members that do not use a centralized operational team to make SEC filings for retail clients. Such SIFMA members are concerned that if the SEC's expectation is that broker-dealers who are authorized filing agents act only in a "delegated entity" capacity, with their registered representatives acting as their delegated "users," this could present significant hurdles for them to adapt to the new EDGAR Next access process.

2. Other Concerns

SIFMA member filers have become aware of certain other areas in which they believe the EDGAR Next access functionality could be improved. Although we agree with the Proposal's requirement to require only one account administrator for individuals and single-member companies, that treatment should extend to a broader range of filers. The proposed definition of "single-member company" would cover "a company that only has a single individual who acts as the sole equity holder, director, and officer (or, in the case of an entity without directors and officers, holds position(s) performing similar activities as a director and officer)." This definition would exclude a range of "non-professional" entities with limited compliance and technical resources, such as family investment vehicles. We recommend that the SEC expand this definition to cover these types of entities.

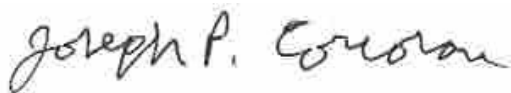
In addition, we recommend that EDGAR Next access credentials not be removed for mere inactivity, which the Commission indicates would happen with API tokens that are not used during a 30 day period.⁹ Different firms may use different features, or engage specific users, with various frequency, and there is no benefit to incentivizing filers to log in from time to time just to avoid a penalty for inactivity. Finally, in response to question 10 from the Proposal, we recommend that deactivation of a filer's account should not cause delegated entities/filers to be deleted from the dashboard. The EDGAR Next access enhancements should not make it harder for EDGAR filers to get back on track and current with filings. If the SEC wishes to pursue a tougher approach to disincentivizing a failure to reconfirm, perhaps those disincentives could be phased in over time.

⁹ See Proposal at 65538.

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SIFMA greatly appreciates the Commission's consideration of our comments above and would be pleased to discuss them in greater detail. As noted, we support the proposed EDGAR Next enhancements, subject to our comments about the proposed transition process. We also believe the EDGAR Next functionality enhancements we describe above would greatly enhance the usability of the system for bulk EDGAR filers such as SIFMA members. If you have any questions or need any additional information, please contact me at 202-962-7383 or jcorcoran@sifma.org.

Sincerely,

A handwritten signature in cursive script that reads "Joseph P. Corcoran".

Joseph P. Corcoran
Managing Director & Associate General Counsel
SIFMA