DIGITAL DEVELOPMENT PARTNERS, INC.

January 25, 2021

VIA ELECTRONIC SUBMISSION: RULE-COMMENTS@SEC.GOV

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-24-20

Dear Ms. Countryman:

The Securities and Exchange Commission is on the brink of a misguided, and entirely unnecessary, intervention in our public capital markets. The proposed amendments to Rule 144 would eliminate a vital source of financing—market-adjustable convertible loans—for thousands of small- and medium-sized businesses, such as ours, that generally cannot obtain affordable capital from other sources. *See Rule 144 Holding Period and Form 144 Filings*, Securities Act Release No. 10,911, Exchange Act Release No. 90,773, 2020 WL 7701214 (Dec. 22, 2020). This is especially the case at this critical time in our economy when the COVID-19 pandemic has made it increasingly difficult for businesses of this size to obtain capital. As officers and directors of publicly-traded companies who have relied on these loans to grow our businesses and increase long-term shareholder value, we respectfully urge the Commission to withdraw this misguided proposal.

As representatives of new and emerging companies that are not listed on a national securities exchange, it is often extremely difficult for us to obtain financing from more traditional sources of funding in order to execute our business plans and grow our businesses. Convertible lenders, encouraged by the SEC's 2007 amendments shortening the Rule 144 holding periods, have stepped into this void and provided the vital funding our companies need in the form of market-adjustable convertible loans. Without these convertible loans, we absolutely would not have been able to grow our companies.

These convertible loans typically provide issuers with the opportunity to either repay the loan in cash or convert the outstanding loan amount into discounted shares of the issuer. The discount to share price is generally market-adjustable in order to compensate convertible lenders for the risks they undertake in loaning money, with no ability to convert and sell for at least six months, to newer and smaller publicly-traded companies like ours that do not have the track record of more established and larger companies.

By prohibiting tacking of the time between loan and conversion in calculating when the Rule 144 holding period has been satisfied, as the SEC proposes for loans to unlisted issuers, the SEC would significantly increase the risk to convertible lenders of making such loans. That added risk would be passed on to unlisted issuers and their shareholders in a variety of ways, driving up the cost of financing our businesses. Many convertible lenders would likely cease lending entirely to companies like ours, reducing the supply of capital and further increasing financing costs to the point that convertible loan financing would very likely become unaffordable to many issuers. This would in turn have a major negative effect on our businesses, resulting in the destruction of long-term shareholder value and putting some issuers out of business altogether.

Indeed, as the SEC itself recognizes in its proposed rulemaking, "the proposed amendment is likely to have an effect on capital formation" and "could prevent some unlisted issuers from obtaining financing or increas[e] the costs of doing so, particularly since market-adjustable securities may constitute a 'last resort' form of financing for issuers." 2020 WL 7701214, at *17, *20. It would be especially difficult to replace these "last resort" convertible loans with alternative financing during the COVID-19 pandemic and the period of post-pandemic economic recovery. While there is no good time to limit (or eliminate) financing for small and medium-sized business, it is especially inappropriate to propose doing so during a pandemic that has severely damaged the U.S. economy.

Making rule changes that would cripple small and medium-sized public companies during a pandemic makes especially little sense because these convertible loans do **<u>not</u>** harm shareholders. These loans are typically publicly disclosed at the time the loans are made, so existing and potential shareholders are fully aware of the loans many months before there is any potential conversion. That gives potential shareholders the opportunity to decline to invest in companies that have received these loans, and existing shareholders the opportunity to sell their shares well before any potential conversion.

Moreover, these loans are approved by the companies' officers and boards of directors, who often own a large percentage of the companies' stock, because they believe that, although there may be a temporary impact on share price during the period that converted shares are sold, the loans will allow the companies to execute their business plans and *increase* long-term shareholder value. It would make no sense for officers and directors to approve taking out convertible loans that harm the long-term value of their *own* shares as well as those of other shareholders.

The undersigned, in my role as outside legal counsel to small public companies for over 30 years, has witnessed the benefit of market-adjustable convertible loans. In every case with which I was involved as counsel, the client-company entered into the loan transactions with "eyes open," fully understanding the risk-benefit analysis associated therewith, as well as its duties to shareholders.

The public company in which I am currently a principal, Digital Development Partners, Inc. ("DGDM") is a superior example of a company that has benefitted from the use of market-adjustable convertible loans. By obtaining such financing, DGDM has been able to advance more rapidly towards its business objectives, to the benefit of its shareholders.

During my practice, which dates back to a time when blank-check shell spin-offs of trading companies was permitted by the SEC, it seems that the overarching response to particular issues in the market has been to "throw the baby out with the bath water," rather than seeking to isolate bad actors.

In the instant circumstance, the liquidity and opportunity provided by market-adjustable convertible loans is ultimately important to capital formation activities by small public companies, and the adoption of the proposed amendment to Rule 144 prohibiting tacking of the time between loan and conversion in calculating the relevant holding period for unlisted issuers' market-adjustable convertible loans would have a draconian, and unnecessary, impact on small trading companies who aspire to become "listed."

For the reasons stated, I urge the SEC to decline to adopt the proposed amendment to Rule 144 prohibiting tacking of the time between loan and conversion in calculating the relevant holding period for unlisted issuers' market-adjustable convertible loans.

Respectfully submitted,

Eric Newlan
Vice President and
General Counsel
Digital Development Partners, Inc.