February 22, 2021

Secretary Vanessa Countryman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
By email: countrymanv@sec.gov

Re: **File No. S7-24-20**, Release Nos. 33-10911 and 34-90773, Proposed Amendments to Rule 144 and Form 144 ("Proposed Rule Change")

Dear Secretary Countryman:

On behalf of the Securities Transfer Association, Inc. ("STA"), we want to thank the Securities and Exchange Commission ("Commission") for the opportunity to comment on the Proposed Rule Change concerning the holding period for securities acquired upon the conversion or exchange of market-adjustable securities. The STA appreciates the risk of unregistered distributions in connection with sales of those securities and supports the Commission's efforts to minimize that risk.[1] The STA writes respectfully to propose that the Proposed Rule Change be tailored further to eliminate tacking for market-adjustable securities only if the relevant issuer is a non-reporting company or a reporting company that has not been current it its filings for the previous twelve consecutive months.

The STA, as you know, is an organization of professional recordkeepers that interact daily with both issuers and their investors concerning securities offerings, issuances, and transfers. Founded in 1911, the STA's membership is comprised of over 130 large and small registered transfer agents in the United States (U.S.) and Canada maintaining the records of more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public

[1] While not the subject of this letter, the STA commends the Commission's efforts to simplify the Form 144 filing requirements.

companies to small privately held companies). The transfer agents that comprise the membership of the STA primarily are equity transfer agents and range in size from small businesses to a limited number of large institutions that collectively provide transfer agency and related services to the corporations listed on national securities exchanges in the U.S. as well as private companies trading in the OTC marketplace.

The STA recognizes that market-adjustable securities pose a unique risk of unregistered distributions resulting from their discounted conversion or exchange formulas, and it is mindful of the potential for fraud in exercising these conversion notices. The STA is also mindful, though, of the importance of this type of convertible debt financing, particularly to microcap issuers to whom conventional means of financing are often not available. Indeed, convertible debt financing that utilizes a discounted conversion rate is generally a last resort for microcap issuers.

The Proposed Rule Change, which seeks, *inter alia*, to shift the economic risk of market-adjustable securities, is likely to deter significantly this type of financing. Indeed, such an amendment may effectively eliminate market-adjustable securities, leaving many microcap issuers without necessary funding and, therefore, injuring the very shareholders which the Commission seeks to protect by its Proposed Rule Change.

The STA respectfully submits that the Commission's goal "to reduce the risk of unregistered distributions in connection with sales of [market-adjustable] securities" can be accomplished while permitting certain reporting companies to avail themselves of financing through market-adjustable securities. In fact, there is already precedent within Rule 144 for differentiating between reporting and non-reporting companies.

Section (i) of Rule 144 makes available the safe harbor of Rule 144 to investors in former shell companies ***only if*** the former shell company has satisfied its reporting requirements for the previous twelve months. Limiting the availability of Rule 144 to reporting companies in this manner minimizes the risk to the public of unregistered distributions of securities without unnecessarily constraining investment in all former shell companies.

Similarly, if the Proposed Rule Change to eliminate tacking for market-adjustable securities applied only to non-reporting companies, it would have the effect of minimizing the risk to the public of unregistered distribution of securities obtained through market-adjustable securities without unnecessarily suppressing the ability of microcap companies to obtain capital. In other words, such an

amendment would protect, not only shareholders most at risk of injury from market-adjustable securities but also, shareholders of reporting companies from the consequences resulting from failed microcap issuers who were unable to access capital. Moreover, the ability to obtain financing through market-adjustable securities may well encourage microcap issuers to satisfy the reporting requirements of the Exchange Act.

For the reasons stated herein, the STA respectfully requests that the Commission consider tailoring further the Proposed Rule Change to eliminate tacking for market-adjustable securities only with respect to non-reporting issuers.

Thank you again for your efforts in drafting the Proposed Rule Change, and thank you for providing the STA with the opportunity to provide these comments in response thereto.

Sincerely,

Todd J. May
President
Securities Transfer Association