Committee on Securities Law
of the Business Law Section of the
Maryland State Bar Association

March 22, 2021

VIA THE SECURITIES AND EXCHANGE COMMISSION'S INTERNET COMMENT FORM

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

Re: Proposed Amendments to Rule 144 Holding Period and Form 144 Filings, File No. S7-24-20

Ladies and Gentlemen:

This letter expresses the views of the Committee on Securities Law (the "Committee") of the Business Law Section of the Maryland State Bar Association ("MSBA") with respect to the above-referenced proposing release, SEC Release Nos. 33-10911; 34-90773; File No. S7-24-20 (sometimes referred to herein as the "release") relating to the Securities and Exchange Commission's (the "Commission") proposed amendments to revise the holding period determination under paragraph (d)(3)(ii) of Rule 144 of the Securities Act of 1933 ("Rule 144") for securities acquired upon the conversion or exchange of certain market-adjustable securities of issuers that do not have securities listed, or approved for listing (which we sometimes refer to as "listed" issuers), on a national securities exchange, mandate electronic filing of Form 144, and make certain other changes to Form 144 filing requirements. The membership of the Committee consists of securities practitioners who are members of the MSBA and includes lawyers in private practice, business, and government. The Business Law Section and the Board of Governors of the MSBA have not taken a position on the matters discussed herein, and individual members of the MSBA and the Committee, and their associated firms or companies, may not necessarily concur with the views expressed in this letter.

The Committee wishes to express its support for the majority of the proposed amendments. In particular, we agree that it is appropriate that the holding period of securities acquired upon conversion or exchange of certain

"market-adjustable securities," as described in the release, of the same issuer commence only upon receipt of the underlying securities. We agree with the Commission's position that based on the character of such market-based securities, the holder of the securities received upon conversion or exchange thereof does not assume the full economic risk of the holder's investment in the underlying securities until the holder receives such securities upon conversion or exchange. As a result, it is not appropriate that the security holder be permitted to "tack" the period of time that the holder held the market-adjustable securities to the holding period of the underlying securities, and we agree that Rule 144(d)(3)(ii) should therefore be amended with respect to the commencement of the holding period of such underlying securities as proposed.

We suggest, however, that the Commission reconsider its proposal to exclude securities of a listed issuer from the amended holding period calculation. We note that the release explains in this regard that listed issuers must comply with certain requirements, "such as requiring shareholder approval of an issuance of 20 percent or more of a company's common stock" and that "[b]ecause market-adjustable securities have the potential to result in highly dilutive issuances of large amounts of the issuer's securities, these required approvals are not likely to be granted in the situations the amendment is intended to address." While the latter statement may be accurate, as proposed listed issuers would still have the ability to issue market-adjustable securities in an amount that would not trigger the shareholder approval requirement. The release also notes that listed issuers "have generally not been engaging in these transactions." If that is the case, then we question the need to include the exception for securities of listed issuers. In other words, for those listed issuers who aren't issuing market-adjustable securities that are the subject of the proposed amendments to Rule 144(d)(3)(ii), this won't ever be an issue regardless of whether the carve-out for securities of a listed issuer is included in the final amendments. Under the proposed amendments, however, even if unlikely such issuances, and the holding period tacking in question, *would* still be possible. An issuer's status as having securities listed on a national securities exchange does not change the underlying nature of this type of issuance – i.e. that a person that acquires market-adjustable securities as described in the release is not at risk with respect to the underlying securities prior to conversion or exchange of the market-adjustable securities. In light of this, we simply see no benefit to excluding the securities of listed issuers from the operation of amended Rule 144(d)(3)(ii) as proposed.

We also wish to express support for the proposed mandated electronic

filing of Form 144 and the elimination of the Form 144 filing requirement with respect to resales of securities of issuers that are not subject to the periodic reporting requirements of the Securities Exchange Act of 1934 ("Exchange Act"). Given that Form 3, 4, and 5 beneficial ownership statements have been required to be filed electronically for almost 18 years, we believe it is perfectly reasonable to require that Forms 144 be filed in this manner as well. We also strongly support the Commission's proposal to eliminate the Form 144 filing requirement with respect to resales of securities of issuers that are not subject to the Exchange Act's periodic reporting requirements. As holders of such securities are not subject to the beneficial ownership filing requirements under the Exchange Act, we believe it is reasonable that they not be subject to the Form 144 filing requirement either, especially if electronic filing of Form 144 is required as proposed. Issuers subject to Exchange Act reporting usually have the means to, and generally do, assist their affiliates with these electronic filings, but in our experience the same is not necessarily true of non-reporting issuers, and we believe many of these issuers and the holders of their securities (in those cases were the issuer does not assist) would be overwhelmed by the process of obtaining EDGAR filing codes and using the electronic filing system, among other concerns. We strongly agree with the Commission that, with respect to holders of securities of non-reporting issuers, the limited "benefits of having this information filed electronically would not justify the burdens on filers."

We appreciate the Commission's consideration of the foregoing comments.

Very truly yours,

Committee on Securities Law of the Business Law Section of the Maryland State Bar Association

Penny Somer-Greif, Chair

Gregory T. Lawrence, Vice-Chair