

December 8, 2021

VIA E-MAIL (rule-comments@sec.gov)

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

Re: Rule 144 Holding Period and Form 144 Filings (RIN 3235-AM78)
File No. S7-24-20

Dear Ms. Countryman:

We write on behalf of the Small Public Company Coalition (SPCC) to address several comments recently submitted by individuals associated with the Basile Law Firm, P.C. (the “Basile Firm”) purporting to support the proposed amendment to Rule 144 to prohibit “tacking” for market-adjustable convertible loans to unlisted issuers.

The Basile Firm consists of a group of plaintiffs’ lawyers who file opportunistic lawsuits to “void” or otherwise “rescind” fully completed financing arrangements in the hopes of obtaining windfall profits. *See* SPCC Comments 33-35 (Mar. 22, 2021). The Basile Firm evidently views this rulemaking as an opportunity to lend credibility to theories that the firm is pressing in pending litigation, claiming that convertible lending is harmful or somehow unlawful. To that apparent end, on November 29, 2021, the Basile Firm’s Twitter account, @otclawyers, published a series of tweets encouraging “Shareholder[s] in @OTCMarkets issuers” to submit comments in support of the tacking prohibition to “let them know your losses.”¹

Aside from a two-sentence comment from William Gainey—informing the Commission that he “hope[s] this is passed” but which did not mention any “losses”—no investor commented on the proposed rule change, let alone documented any “losses” attributable to

¹ *See* Screenshot of the Basile Firm’s tweets, available at <https://twitter.com/otclawyers> (enclosed herewith as Exhibit A). We have filed a FOIA request to the SEC for all communications between the Basile Firm and the SEC from November 1, 2021 through December 7, 2021, including but not limited to communications concerning the proposed Rule 144 rulemaking and any need for shareholders to submit comments describing their losses. *See* Exhibit B enclosed herewith. The Commission is legally obligated to respond to this request by January 5, 2022. *See* 5 U.S.C. § 552. We also urge the SEC to post any meetings between the Basile Firm and the SEC to the rulemaking docket.

Vanessa Countryman
December 8, 2021
Page 2

convertible lending. This is yet further proof—if more were needed—that the Commission’s proposal is not necessary or desired. *See* SPCC Comments 16-35. Out of the Basile Firm’s more than 7,500 twitter followers—most of whom are presumably investors and others interested in the OTC market—not a single investor commented unfavorably on convertible lending. *Cf.* Asset-Backed Securities Disclosure and Registration, Securities Act Release No. 9638, Exchange Act Release No. 72,982, 2014 WL 4820167, at *90 (Sept. 4, 2014) (finding that additional disclosure requirement was not “necessary” because the Commission “did not receive any comments from investors suggesting that [such] disclosure . . . [was] necessary”).

Without any investor losses to speak of, the Basile Firm appears to have solicited, instead, the comments of several executives of small public companies. Notably, most (if not all) of these letters were filed by companies that the Basile Firm currently represents in ongoing litigation—a seemingly material fact that the commenters failed to disclose to the Commission. Lorraine Yarde, for example, is the CEO of GeneSYS ID, Inc, a microcap company that Mark Basile co-founded and of which he currently serves as General Counsel,² and which the Basile Firm also represents in litigation. Ken Tapp is the CEO of Social Life Network, Inc., a company that the Basile Firm currently represents in multiple ongoing lawsuits. And Mark Bradley is the CEO of Players Network, Inc., which the Basile Firm also currently represents in litigation.

A fourth commenter, J. Richard Iler, describes himself as a “Corporate Financial Consultant” that has served as “the CFO of several OTC companies,” but he fails to mention that one of these OTC companies for which he serves as CFO is GeneSYS ID, the microcap company that Mark Basile co-founded.³ Nor does Mr. Iler disclose that he currently works as a “Restructuring Advisor” and “Interim CFO” for the Basile Firm.⁴ This is now the second employee of the Basile Firm—putting aside Mark Basile himself—who has filed comments without disclosing his or her employment with the Basile Firm. *See* SPCC Comments 33 (discussing comments from Brenda Hamilton (Feb. 15, 2021)).

SPCC is not presently aware of any connection between a fifth and sixth commenter—David Lovatt, CEO of GenTech Holdings, Inc. and Brian Kistler, CEO, Freedom Holdings, Inc.—and the Basile Firm, but, in any event, these comments undermine the proposed rule

² *See Bloomberg Markets* webpage relating to Mr. Basile, *available at* <https://www.bloomberg.com/profile/person/4106676> (enclosed herewith as Exhibit C).

³ *See Bloomberg Markets* webpage relating to Mr. Iler, *available at* <https://www.bloomberg.com/profile/person/19779094> (enclosed herewith as Exhibit D).

⁴ *See Meet Our Team* page from the Basile Firm website, *available at* <https://www.thebasilelaw-firm.com/meet-the-team> (enclosed herewith as Exhibit E); J. Richard Iler LinkedIn profile, *available at* <https://www.linkedin.com/in/j-richard-iler-8001605> (enclosed herewith as Exhibit F).

Vanessa Countryman
December 8, 2021
Page 3

change. In identical letters (that are also identical to a letter filed by Ken Tapp, the CEO of the Basile Firm’s client Social Life Network), Mr. Lovatt and Mr. Kistler state that “[t]he current ‘tack back’ provision harms small public companies.” But according to public filings, it does not appear that Mr. Kistler has ever raised convertible debt financing, while Mr. Lovatt, in contrast, has successfully used this method of financing on scores of occasions. In a four-year span, from May 2015 to September 2019, GenTech raised more than \$900,000 in *43 separate convertible-debt transactions*. See GenTech Holdings, Inc., Part II – Information Requested in Offering Circular, at F-9 to F-14 (June 1, 2021), https://www.sec.gov/Archives/edgar/data/1591157/000168316821002294/gentech_1apos-060121.htm. That two companies either have no need for convertible financing or have already benefitted from it for years is no reason to deny that same funding opportunity to their earlier-stage competitors and others who might need it. Indeed, if certain issuers and their boards do not find convertible financing valuable or have other funding opportunities, they do not need to take this form of financing. However, the Basile Firm and its commenters should not seek the SEC’s intervention to prevent the many issuers that do find convertible financing valuable and do not have other forms of financing available to them from entering into convertible debt agreements.

If the SEC were to rely on these eleventh hour contrived sources to move forward with its misguided proposal, it would seriously damage the Commission’s credibility and raise significant questions regarding the Commission’s decision-making process. All in all, the failure of the Basile Firm’s last-minute manufactured campaign stands in stark contrast to the comment letter opposing the proposed tacking prohibition filed by CEOs and other executives of 62 small public companies.⁵ Among other things, the executives explained that “[t]he 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.” The letter also explained that a tacking prohibition would “result[] in the destruction of long-term shareholder value and put[] some issuers out of business altogether.”

Indeed, as we noted in a prior comment letter, an analysis of “just a small subset of convertible-note transactions from some of SPCC’s members easily reveals more than **\$4 billion** in current market capitalization that would likely not exist today” if the SEC had previously prohibited tacking.⁶ This **\$4 billion** in shareholder value that a tacking prohibition would have destroyed again stands in enormous contrast to the **zero** shareholder losses from convertible debt financing that investors identified in response to the Basile Firm’s Twitter request.

⁵ See Comment of 62 Small Public Companies (Jan. 25, 2021), available at <https://www.sec.gov/comments/s7-24-20/s72420-8525296-230250.pdf>.

⁶ See Letter from Helgi C. Walker et al. (Oct. 4, 2021), available at <https://www.sec.gov/comments/s7-24-20/s72420-9323318-260148.pdf>.

Vanessa Countryman

December 8, 2021

Page 4

Rather than count as evidence favoring the proposed Rule 144 amendment, the handful of comments filed last week, primarily by those closely affiliated with the Basile Firm, demonstrates that there is minimal support among small public companies or their shareholders for a tacking prohibition. That minimal support is dwarfed by the large number of small public companies that oppose the proposed amendment.

Based on the foregoing, and for the reasons we have previously discussed, the SEC should abandon its proposed rulemaking or, at the very least, consider the less restrictive alternatives available to it.⁷

Respectfully submitted,

/s/ Helgi C. Walker

Helgi C. Walker

Barry Goldsmith

M. Jonathan Seibald

Brian A. Richman

GIBSON, DUNN & CRUTCHER LLP

⁷ See Comments of the Small Public Company Coalition on the Proposed Amendment to Rule 144 (March 22, 2021), available at <https://www.sec.gov/comments/s7-24-20/s72420-8530449-230302.pdf>; Letter from Helgi C. Walker et al. (Oct. 4, 2021), available at <https://www.sec.gov/comments/s7-24-20/s72420-9323318-260148.pdf>.

EXHIBIT A



Securities Attorneys

264 Tweets



Securities Attorneys @o... · Nov 29 ...

Shareholder in @OTCMarkets issuers. The SEC has proposed changes to Rule 144 that would stop serial conversions by modifying the "tack back" rule to apply on each and every conversion. Hurt by driven down stock prices, let them know here - sec.gov/cgi-bin/ruling...

7 19 56



Securities Attorneys @o... · Nov 29 ...

sec.gov/comments/s7-24...

2 3



Securities Attorneys @o... · Nov 29 ...


sec.gov/cgi-bin/ruling... you get to the SEC Website, search 2020 and the top one should be "Submit Comments on S7-24-20

Rule 144 Holding Period and Form 1 Filings" This is where shareholder support this rule change should comment, let them know your losses! It



EXHIBIT B

Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Helgi C. Walker


December 8, 2021

VIA ELECTRONIC MAIL

Office of FOIA Services
U.S. Securities and Exchange Commission
100 F Street, NE
Mail Stop 2465
Washington, D.C. 20549

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

Please produce copies of all communications between the Basile Law Firm, P.C. and the SEC from November 1, 2021 through December 7, 2021, including but not limited to communications concerning the SEC's Proposed Rule: Rule 144 Holding Period and Form 144 Filings (File No. S7-24-20) and any need for shareholders to submit comments describing their losses in connection with this Proposed Rule. This request includes all communications to or from email accounts ending in "@thebasilelawfirm.com".

We agree to pay the reasonable costs and fees associated with this request. Please deliver the requested records to me at:

Helgi C. Walker, Esq.
Gibson, Dunn & Crutcher LLP
1050 Connecticut Ave., N.W.
Washington, DC 20036

Thank you for your assistance on this matter.

Respectfully,

/s/ Helgi C. Walker

Helgi C. Walker

EXHIBIT C

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Mark A Basile

General Counsel, Genesys ID Inc

CURRENT POSITION

General Counsel, Genesys ID Inc

TENURE AT CURRENT POSITION

9/2016-PRESENT

PREVIOUS POSITION

Chief Strategy Officer/Co-Founder, Genesys ID Inc

EDUCATION

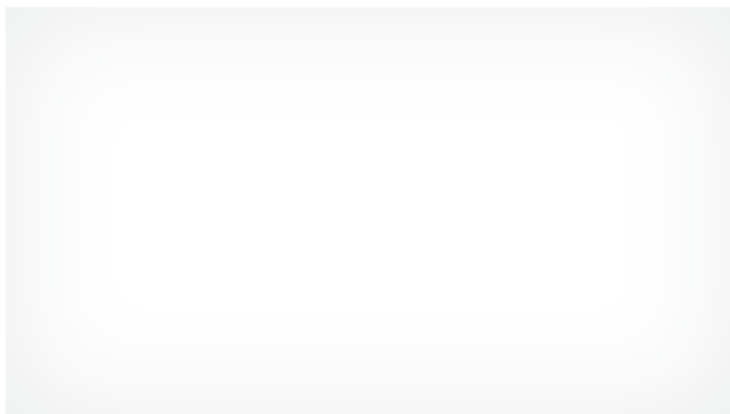
Yeshiva University
Hofstra University

BOARD MEMBERSHIPS

Genesys ID Inc
RX Safes Inc

INDUSTRY

Industrial Products



Board Memberships

TITLE	COMPANY	TENURE
Board Member	Genesys ID Inc	08/2016-PRESENT
Board Member	RX Safes Inc	09/2015 - 0 / 2016
Board Member	Biometrx Inc	01/2004 - 12/2009

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TITLE	COMPANY	TENURE
General Counsel	Genesys ID Inc	09/2016–PRESENT
Council	Ehealth Initiative	PRESENT
Founder	Biometrx Inc	PRESENT

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Education

DEGREE	INSTITUTION
JD	Yeshiva University
BACHELOR'S DEGREE	Hofstra University

About GeneSYS ID Inc

GeneSYS ID, Inc designs, develops, engineers, and markets fingerprint medical security storage products. The Company offers biometric fingerprint recognition technology in pharmaceutical storage safes. GeneSYS ID provides its products to the healthcare industry as well as to retail consumers.

SECTOR	INDUSTRY	SUB INDUSTRY	INCORPORATED	ADDRESS
Industrials	Industrial Products	Electrical Equipment	06/01/2010	170 South Green Valley Parkway Suite 300 Henderson, NV 89012 United States
PHONE	WEBSITE	NO. OF EMPLOYEES		
1 702 800 4620	www.genesysid.com			

[MORE INFO](#)

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J Richard Iler
CFO/Secretary, Genesys ID Inc

CURRENT POSITION CFO/Secretary, Genesys ID Inc	TENURE AT CURRENT POSITION 8/2016-PRESENT	PREVIOUS POSITION Chief Financial Officer, RX Safes Inc	EDUCATION --	BOARD MEMBERSHIPS --
INDUSTRY Industrial Products				

Advertisement

Career History

TITLE	COMPANY	TENURE
CFO/Secretary	Genesys ID Inc	08/2016-PRESENT
Chief Financial Officer	RX Safes Inc	05/2016-08/2016
	Ernst & Young	FORMER

About GeneSYS ID Inc

GeneSYS-ID, Inc. designs, develops, engineers, and markets fingerprint medical security storage products. The Company offers biometric fingerprint recognition technology in pharmaceutical storage safes. GeneSYS-ID provides its products to the healthcare industry as well as to retail consumers.

SECTOR Industrials	INDUSTRY Industrial Products	SUB-INDUSTRY Electrical Equipment	INCORPORATED 06/01/2010	ADDRESS 170 South Green Valley Parkway Suite 300 Henderson, NV 89012 United States
PHONE 1-702-800-4620	WEBSITE www.genesysid.com		NO. OF EMPLOYEES --	

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Senior Attorney



Marjorie M. Santelli, Esq.

Senior Attorney



Jacques P. Lerner, Esq.

Senior Attorney



Eric J. Benzenberg, Esq.

Managing Associate Attorney



Gus P. Passanante, Esq.

Attorney



Catherine Gretschel, Esq.

Attorney



Robert A. Basile

Attorney



Tyler K. Berger Esq.

Attorney



Esther S. Noh, Esq.

Immigration Counsel



Hana Boruchov

Tax Counsel



Matthew G. Miller, Esq.

Patent Counsel



Joey Chancis

Exec. Restructuring Advisor/Litigation Consultant



J. Richard Iler



Christopher Basile, J.D.



Joseph Rose, J.D.

Restructuring Advisor



Law Clerk



Law Clerk



Donna A. Basile

Business Manager



Nikolaos Chagias

Senior Law Student Associate



Brittany Hickey

Law Student Associate



Emily DeGennaro

Law Student Associate



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EXHIBIT F

Contact

www.linkedin.com/in/j-richard-iler-8001605 (LinkedIn)

Top Skills

Equities

Derivatives

Debt

J. Richard Iler

Corporate Finance and Interim CFO at The Basile Law Firm P.C.
West Sayville

Summary

Diverse corporate finance experience: involved in debt and equity public and private offerings, sale/leaseback of aircraft, joint venture administration, banking relations with principal and agent transactions. Involved in several reverse mergers and acquisitions. Early stage development in incubating and seed financing of technology ventures. Institutional corporate bond sales with Prudential Securities, Bear, Stearns, Kidder, Peabody and Smith Barney. Experience in hedging interest rates, currencies. Served as Treasurer of a Texas Savingsbank and chaired asset/liability committee. Evaluated and acquired nearly \$1bl in mortgage loan servicing rights.

Specialties• Corporate Governance and Management Information Reporting.

- Significant negotiating experience in debt, and equity financings .
- Successful investment management experience and use of derivatives to hedge currency and interest rate risk on \$500mm MBS and CMO. risk controlled arbitrage which returned 25% cash- on cash return over sixteen consecutive quarters
- Obtained effectiveness on four SB-2 registrations.
- Initiated Kidder Peabody Co-manager on \$50mm Perpetual Preferred Stock Issuance

Experience

The Basile Law Firm P.C.
Corporate Finance and Interim CFO
February 2021 - Present (11 months)
Jericho, New York, United States

Assist firm's public companies's clients with financial structuring. Interim Chief Financial Officer with significant capital raising experience. Previous

experience as Chief Financial Officer responsibilities included oversight of all accounting, financial and regulatory financial reporting.

INFOGPSNetworks, Inc

Co-founder, CFO, and Board of Director member

August 2014 - Present (7 years 5 months)

Youngstown, Ohio Area

INFOGPSNetworks, Inc is an early stage SaaS cloud based company whose mission is to find ,encrypt and monitor data in real time through the use of an agent. Whether in cloud-based or on premise, we create board quality reports to identify, classify and assign risk scores data across multiple devices. INFOGPS employs a data centric approach that monitors changes to data and the devices carrying your most sensitive data. We complement legacy applications that companies deploy and expend more than \$65bl yet spend an additional \$275bl to remediate the breaches intended to be protected by these traditional methods.

Robert Half Management Resources

Consultant

September 2012 - April 2013 (8 months)

Akron, OH

SEC reporting on restatements of past years' filings of a financial services company. Report variances within footnotes, and Management Discussion and Analysis and all Nonfinancial disclosures. Concentration in areas of liquidity.

bioMETRX, INC

Chief Financial Officer and Director

June 2006 - March 2009 (2 years 10 months)

Jericho, NY

an emerging leader in consumer electronics integrating fingerprint recognition for home access and security. co-brands products with MasterLOCK

SiriCOMM, Inc

cfo and director

January 2002 - June 2006 (4 years 6 months)

Capital formation responsible for structuring, sourcing and closing private placements totaling over \$12. 5 million. Responsible for all public filings and wrote SB-2 which was successfully filed.

UA eHealth Technologies

cfo

1998 - 2001 (3 years)

Cambridge, MA

Assembled a management team to acquire a web based protocol that transferred a longitudinal patient history to secure second opinion business from emerging countries. Partners included Mass General, Cleveland Clinic, Johns Hopkins and Duke. Technology partners included Cisco and Sun Microsystems (now Oracle)

smith barney

institutional corporate bond sales

1993 - 1994 (1 year)

kidder peabody

Institutional fixed income sales

1991 - 1993 (2 years)

savingsbank

treasurer

1987 - 1991 (4 years)

Bear Stearns

Institutional Fixed Income Sales

1985 - 1987 (2 years)

Prudential Securities

Fixed income sales

1983 - 1985 (2 years)

shelton ranch corp

Cash Management Manager

1977 - 1981 (4 years)

coastal corp

financial analyst

1978 - 1979 (1 year)

Education

South Texas College of Law Houston

Law · (1976 - 1978)

Copenhagen Business School
Political Economics · (1973 - 1974)

Grand Valley State University
Bachelors of Science, Political Economy · (1975)