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March 16, 2021

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

Re: File Number S7-24-20. Rule 144 Holding Period and Form 144 Filings.

Dear Ms. Countryman:

The Basile Law Firm P.C. is a boutique securities litigation and public company restructuring law firm with offices located in Dallas, New York and Naples. We take this opportunity to comment on the Commissions proposed amendments to Rule 144 that would revise the holding period for certain "market-adjustable securities".

Our firm has more than 20 years of direct legal experience in securities disputes having represented more than 50 issuers focusing on "market-adjustable securities". We also provide legal advisory services to securities attorneys and litigants throughout the U.S.

We believe the Commission's proposed amendments to Rule 144 will benefit the OTC marketplace in many ways. It should eliminate many manipulated and potentially fraudulent transactions and deter bad actors from engaging in this business model. It may also encourage already disenfranchised retail investors who have been hurt by the out- of-control dilution and depressed stock prices of prior investments.

Understanding the Issue

At the outset, the Commission must realize that when it refers to "market adjustable securities" it is really focusing on the transaction instruments called "convertible securities" that can take the form of convertible promissory notes, warrants or preferred stock. These securities provide dilution funders the ability to convert the principal and interest due under the notes, or the warrants or preferred stock, into common publicly tradeable securities of an issuer at discounts based on a fixed percentage of the issuers stock trading price rather than at a fixed price per share that is established at the outset of the transaction. These convertible securities are uniformly used by a certain "hard money" segment of funders known as "dilution funders". They may also be subject to certain state usury laws as well since the guaranteed conversion discounts, daily penalties, exorbitant pre-payment penalties collectively may violate certain state usury laws. The operative understanding of the

Commission must be focused on toxic convertible securities because the investors in these transactions and the handful of small law firms participating in them and opining upon them are the biggest abusers of the Rule 144 exemption.

We are very familiar with how securities markets operate *(e.g.,* the various types of Exchange and over the counter ("OTC") markets) the rules, regulations, customs and practices of the securities industry, and the role of specialists, market makers, securities attorneys and transfer agents.

There has been a significant proliferation of "microcap financing" activity conducted by dilution funders utilizing market-adjustable securities in the last ten years involving the purchase of debt, the subsequent conversion of the debt to shares of common stock, and the immediate sale of the converted shares into the public markets. These forms of financing in which dilution funders are engaged often create steep price declines and dilute the amount of the issuers' shares outstanding and public float. The result of the systemic abuse of Rule 144 is the share price for the stock of many of the issuers that dilution funders sell declined precipitously from the date of the dilution funders first sales to the date of their last sales. In fact, we observed price declines of more than 75 percent in most of our clients over a very short period of time.

The business model used by dilution funders and other parties, including some brazen attorneys and a handful of small law firms that seemingly play all sides of the fence when it comes to these transactions, is highly lucrative generating profits totaling hundreds of millions of dollars in the aggregate. Based on my experience over the span of nearly 34 years, given the highly lucrative nature of the business, it is unlikely that this type of activity will cease until the Commission and the courts take steps to remove the economic incentive for engaging in this type of conduct and sanction the lawyers enabling this conduct. That economic incentive is embedded in the current Rule 144 exemptions. Many of the stocks that dilution funders acquire and sell qualify as "penny stocks." The term "penny stock" generally refers to a security issued by a company that trades for less than $5 per share. In fact, almost all of dilution funders sale transactions are at prices that are less than $0.01 per share. Dilution funders sales frequently comprise a substantial percentage of the daily trading volume for each of the issuers they hold debt in. The conversion of debt to common stock increases the issuers' total outstanding shares and the sales of the common stock into the market totaling billion shares of increase in the issuers' public float.

Stock dilution is the decrease in existing shareholder ownership by percentage,in a company as a result of the company issuing new shares or equity securities. New shares increase the total shares outstanding which has a dilutive effect on the ownership percentage of existing shareholders. Thus, in the case of dilution funders, the existing shareholders are adversely impacted by the issuance of additional shares. For some issuers, the increase in shares outstanding result in substantial dilution.

Because most dilution funders promptly sell most of the share's they acquire through the debt purchase agreements quickly, the public float of each issuer also increases quickly as a result of their conduct. Increasing the public float frequently causes downward pressure on the price of the shares. Specifically, the price of a security is based at least in part on the economic forces of supply and demand. When there are more buyers in the market than sellers for a security, the market price has to increase to attract more sellers. When there are more sellers in the market than buyers, the market price has to drop to attract more buyers. Moreover, dilution funders and others who engage in this type of activity frequently convert the debt in a rapid series of tranches, and the conversion rate is frequently based on a discount percentage (not a fixed price per share) to the prevailing market price. These newly issued shares are then immediately sold into the market in large quantities in order to capture the discount and these sales almost always cause the price of the issuers shares to plummet.

Once these shares are sold, more debt is converted to shares, but the effective conversion rate is higher because the price of the stock has fallen. For example, a debtholder will receive twice as many shares if the price falls from $0.10 to $0.05. Further, sales of the newly issued shares results in additional conversions of debt to stock that continues the cycle until all the debt is converted. Given these phenomena, this form of financing in which dilution funders are engaged is sometimes referred to as "toxic financing", "death spirals" or "dilutive financings". Not surprisingly, dilution funders sell large quantities of shares over a short period of time and negatively impacted the price of those securities. The more they can sell and depress the stock the more stock they get in the next tranche, continuing the death spiral cycle.

Many of the issuers with whom dilution funders execute debt purchase agreements are not subject to the reporting requirements of the SEC *(i.e.,* they are "non-reporting companies"). Those companies do not regularly file periodic reports with the Commission, such as an annual or quarterly report.

Public investors benefit from the information provided by reporting companies. They receive detailed information about the issuer's business, and they receive audited financial information. In contrast, there is often a lack of transparency for the non-reporting companies.

The Need to Change Rule 144

We have seen an alarming increase of "microcap financing" activity in the last ten years involving the purchase of convertible debt, the subsequent conversion of that debt to shares of common stock, and the immediate sale of those converted shares. In the last couple of years, the SEC has taken action against some of these dilution funders for not registering as dealers under the ACT that utilize the same debt/stock conversion model

described above and for violations of Section 5 of the Securities Act.[1] But overall, the number of cases pursued by the Commission is much too small with many unregistered dealers operating without restraint. In fact, several have operated openly for years aggressively advertising their services and using unregistered intermediaries to attract issuers. Almost all of the market adjustable securities funders only fund OTC Markets companies, as NASDAQ and the NYSE provide much tougher guidelines and oversight.

This is simply because as Rule 144 exemptions exist now, it is a lawful process for these dilution funders to follow provided they are registered with the SEC as dealers under 15 U.S. Code §78o. The heart of the dilution funders business model is the ability to take advantage of the current exemptions to holding periods offered by current Rule 144, especially on a rolling basis.

Because of this, the number of dilution funders engaging in these types of transactions continues to increase as more small businesses are pillaged. The business of these toxic lenders is highly profitable, in large part because they do not have to incur the costs of compliance that dealers registered with the SEC must pay.

It is our opinion that the sale of unregistered securities by unregistered dealers in penny stocks remain "under the radar" in terms of regulatory oversight. The Commission's efforts have been minimal in comparison to the damage and investor harm resulting from this activity. This makes the need to limit Rule 144 tack back even more urgent that one would expect. The Securities Exchange Commission, while attempting to thwart this business model utilizing the dealer registration requirement to go after individual funders, one at a time, is a piecemeal approach to enforcement. Many of these funders stay 3 steps ahead of the SEC by creating multiple entities by which to conduct business as usual. Amending Rule 144 will do away with serial conversions and the harm to issuers almost completely, that is, until the complicit attorneys that propagate this business activity find a work-around after the rule becomes effective.

Rule 144 is the Lynchpin Statute Allowing Dilution Funders to Ravish Public Issuers and Destroy Shareholder Value

The Commission must understand that the entire dilution funders business model relies solely on the current Rule 144 exemptions allowing a regulated holding period to "tack-back" to the date when the "securities contract" was first entered into. This "exemption" is the lynchpin, or crux, of this type of business model. Actually, this exemption is in

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[1] *See, e.g., SEC v. Chicago Ventures Partners, LP, et al.,* SEC Rel. No. 24886, 2020 WL 5291429 (Sep. 3, 2020); *SEC v. Justin Keener, et al.,* SEC Rel. No. 24779, 2020 WL 1452508 (Mar. 24, 2020); *SEC v. John D. Fierro, et al.,* SEC Rel. No. 24748, 2020 WL 950737 (Feb. 26, 2020); *SEC v. River North Equity, LLC, et al.,* SEC Rel. No. 24419, 2019 WL 1124189 (Mar. 12,2019); *Ironridge Global Partners, LLC, et al.,* Exch. Act Rel. No. 81443, 2017 WL 358803

practical application, the executioner of these small public companies. Looking back above as to the “cycle” of conversions instituted by dilution funders after holding the initial securities for 180 days, Rule 144 allows them to start converting principal and interest, exercising warrants, or converting preferred stock into common, based on their fixed percentage discounts tied directly to the market price of the issuer’s securities. The abuse that current rule 144 exemptions have created cannot go understated. The following illustrates how the current Rule 144 exemption is used by dilution funders:

Dilution Funder X purchased a $100,000.00 convertible note from company A and charges a 10% interest rate on Jan. 1, 2021. The convertible note carries a conversion discount percentage of 35%. Dilution funder waits 180 days currently required under Rule 144 before it can start converting the debt into stock. Prior to July 1, 2021 (day 181), the dilution funder sends an instruction to its attorneys or broker to prepare a conversion notice, prepare or acquire a Rule 144 opinion letter of counsel and submit those directly to the issuers transfer agent for processing. The issuer has already executed what this industry calls an “Irrevocable Transfer Agent Instruction Letter” allowing the dilution funder to by-pass the issuer and directly compel the issuance of the shares directly from the issuers transfer agent to complete the conversion. The opinion letter of counsel is relied upon by the transfer agent that clears the transaction for processing under current Rule 144. The conversion request is almost uniformly at a number of shares just under the “4.99% blocker” requirement under the transaction documents.

In this exact business model, the damage is done instantly as those shares are immediately sold after receipt by the funder broker, dropping the markets stock price, and based on the current Rule 144 holding period, the dilution funder can quickly submit another conversion notice since the there is still debt due under the original securities instrument tacking back to the date the securities contract was entered into.

In reference to conversion-discounts of this nature, the U.S. Securities and Exchange Commission actually gives a warning to borrows:

“A market-price based conversion formula [(like the fixed discount rate)] protects the holders of the convertibles against price declines, while subjecting both the company and the holders of its common stock to certain risks. Because a market-price based conversion formula can lead to dramatic stock price reductions and corresponding negative effects on both the company and its shareholders [these convertibles] have colloquially been called “floorless,” “toxic,” “death spiral,” and “ratchet” convertibles.”

A Demonstrable Example.

As in the example above, from the face of the Note one may calculate that, if the dilution funder chose to convert $5000 worth of debt, that amount of debt would be repaid with stock with a minimum fair market value of $7,692 ($5000 x 1.5385 = 7,692). Because the discount

rate is a percentage (35%), not a per share price, the amount of return is completely insulated from price fluctuations (as noted by the SEC in the quote above) even if the dilution funder itself causes the fluctuations. That is, if the dilution funder were to take $5000 of debt and "convert' it into stock on day 181, when the trading price of the stock was (for example) $1.00 per share, under the discount the dilution funder would receive 7,692 shares of stock (valued at $7,692), for a guaranteed gain of 54%. If the dilution funder then carelessly flushed all of the shares into the market and drove down the price to $.80 per share, it would be of little concern to the dilution funder, because the next tranche of stock to be converted would be at 65% of the lower $.80 price, i.e., they would receive 9615 shares—still worth $7,692— if they converted a second $5000 of debt. This cycle continues until the debt had been fully repaid. These aren't investments as the funder is not taking any risk in the success of the company – they only care about trading volume to quickly sell those shares.

This is an example when only 1 dilution funder is involved in an issuers stock. The Commission must understand that the average microcap issuer has at least 3 dilution funders (we have seen up to 9 in one issuer) simultaneously converting their stock and racing into the market to sell those shares, of the same issuer. This is more the common scenario in almost all OTC Markets issuers that carry convertible debt.

This model cycle usually continues in the same manner for every subsequent conversion tranche of debt the dilution funder(s) choose(s) to convert. The lower the stock price goes, the more shares they receive for the same dollar amount converted in the next tranche. And thanks to the current Rule 144 tack-back requirements, dilution funders have been engorging their pockets on the backs of issuers and their shareholders.

This outrageous scheme is further compounded because the conversions are usually not based on the market price of the common stock at the time of conversion, but rather, the conversion price based on either the lowest, or the average of the lowest, trading price over the prior 20 days to conversion allowing an even lower baseline, price per share to apply the discount to, than the actual price on the date of conversion.

Many of this firms' clients have been put out of business or severely hampered in raising money because of the economic harm caused by these types of funding's – with the root of the problem being the Rule 144 tack-back provision. Without the assistance of the complicit attorneys who design the scheme and arrange for bogus legal opinions, these dealers could not exist. Their public sales would be subject to the manner of sale and volume limitations in accord with the other provisions of Rule 144.

We have also read comment submissions by a handful of small public companies against the proposed rule changes. We believe that those comments are misguided and that the rule change will not substantially change the ability for small public companies to attract and secure capital. In fact, some of those companies are, or have been, embroiled in lawsuits commenced against them by the very toxic market adjustable securities lenders they claim

should be allowed to conduct business as usual. Some of those companies have not yet felt the longer-term effects of those transactions. The apparent lack of concern for those companies small trading investors should be considered by the Commission in evaluating the full market impact of these types of transactions.

Some of the issuer comments (many of which are eerily similar to others also filed and could be the result of a concerted effort by one of the toxic lenders to dissuade the SEC from changing Rule 144) that oppose the proposed Rule changes are what we describe as "Toxic Funding Addicts". Issuers regularly get hooked on this "needs" cycle by the simple and quick process of securing these types of funding's that usually take 2 to 3 days to close. Most traditional equity investors will not invest in issuers that carry toxic convertible debt on their books, so the addicts need to find other "dealers" (usually '*unregistered'* ones) to get their fix. In fact, some of the comments seem to accept the "borrowing from Peter to pay Paul" approach thinking they can always secure more toxic funding before the Rule 144 six-month window for tack-back expires and pay off those obligations before the dilution funder starts converting. The sad result is in most cases, they don't, leaving the issuers without any further sources of raising capital.

The proposed Rule changes will help to eradicate these harmful financial models and provide much needed relief to not only microcap and small-cap public company issuers, but also to the hundreds of thousands of investors/shareholders that invest into these companies that trade on the OTC Markets.

We have read a comment submitted by a well-known big law attorney against the proposed rule changes, but while well written, fails to understand the devastation of these types of transactions on the OTC Markets listed companies. That comment focuses mostly on seven-figure convertible notes and NASDAQ, understandable considering how NASDAQ and the NYSE have much stricter compliance rules that deter and thwart this model activity on those exchanges. The majority of variable rate securities are transacted between these funders and OTC Markets issuers, and the average convertible note purchased from OTC issuers is $75,000.00, not millions of dollars, and the OTC Markets have less oversight in general than the national exchanges.

At this point, we refer the Commission to re-read comment letter dated February 15, 2021 submitted by securities attorney Brenda L. Hamilton with regard to our position adopting her analysis and recommendations.

Thank you for consideration of our comments.

Sincerely,

/s/ Mark Basile
Mark R. Basile, Esq.
The Basile Law Firm P.C.