

## SUPPORTING STATEMENT FOR RULE 701

### A. Justification

#### 1. Circumstances Making the Collection of Information Necessary

Absent an available exemption, the Securities Act of 1933 (the “Securities Act”) requires that a registration statement be filed with the Commission disclosing prescribed categories of information before the securities may be offered for sale to the public. The securities may not be sold to the public until the registration statement becomes effective. In addition, prospective investors must be furnished a prospectus containing the most significant information from the registration statement. However, Congress recognized that in some situations there may be no need for registration and thus provided a number of exemptions from registration. Section 28 of the Securities Act permits the Commission to “conditionally or unconditionally exempt any person, security or transaction ... from any provision ... to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with protection of investors.”

Rule 701 permits a company that is not subject to the reporting requirements under the Securities Exchange Act of 1934 to offer and sell its securities under a written compensatory plan established by the issuer for the participation of the company’s employees, directors, general partners, officers or consultants and advisors without registration under the Securities Act. The total sales price or maximum amount of securities that may be sold in a year under the rule is the greatest of: \$1 million; 15% of the total assets of the issuer or its parent company if the issuer is a wholly-owned subsidiary; or 15% of the outstanding amount of the class of securities being offered and sold in reliance on this section. The issuer must provide to investors a copy of the compensatory benefit plan or contract. If the total sales price or amount of securities sold during any 12-month period exceeds \$5 million the issuer must deliver additional disclosure to investors a reasonable period before the date of sale, including for example: a copy of the summary plan description required by the Employee Retirement Income Security Act of 1974 (“ERISA”) or, if the plan is not subject to ERISA, a summary of the plan’s agreement; and the financial statements required to be furnished by Part F/S of Form 1-A.

#### 2. Purposes and Use of the Information Collection

The purpose of the Rule 701 collection is to ensure that a basic level of information is available to investors under the compensatory plan. If companies do not provide basic risk and financial disclosure to their investors, even when these persons have a business or employment relationship with them, there is a danger that investment decisions will be made without sufficient information.

#### 3. Consideration Given to Information Technology

The required information is provided to the investors in the compensatory plan and is not provided to the Commission. The information may be electronically transmitted to investors.

4. Duplication of Information

The information required by Rule 701 is not duplicative of other required disclosure.

5. Reducing the Burden on Small Entities

The Rule 701 exemption was designed to decrease costs and burdens for all issuers, including small business issuers, and facilitate security offerings between issuers and their employees.

6. Consequences of Not Conducting Collection

The legislative intent for collection of this information requires that the information be available prior to the making of the investment decision. It cannot be satisfied by fewer collections.

7. Special Circumstances

Not applicable.

8. Consultations with Persons Outside the Agency

Rule 701 was proposed for public comment. No comments were received on this request during the 60-day comment period prior to OMB's approval of this submission.

9. Payment or Gift to Respondents

The Agency does not provide payment or other forms of remuneration to respondents of this Information Collection

10. Confidentiality

The Rule 701 information is not filed with the agency.

11. Sensitive Questions

Not applicable.

12. Estimate of Respondents Reporting Burden

Approximately 300 companies annually rely on the Rule 701 exemption and it takes 2 hours per response. We estimate that 25% of the 2 hours per response (.5 hours) is prepared by the company for total annual reporting burden of 150 hours (.5 hours per response x 300 responses). The estimated burden hours are solely for the purpose of the Paperwork Reduction Act.

13. Estimate of Total Annualized Cost Burden

We estimate that 75% of the 2 hours per response (1.5 hours) is prepared by an outside law firm hired by the firm. We estimate that it costs \$400 per hour (\$400 x 1.5 hours per response x 300) for a total cost burden of \$180,000. The estimated cost burden is made solely for purposes of the Paperwork Reduction Act. The cost is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

14. Costs to Federal Government

No special filing is required to be made with the government under the rule, so no cost is attributed to the review and processing of the information.

15. Reason for Change in Burden

No change in burden.

16. Information Collection Planned for Statistical Purposes

Not applicable.

17. Display of OMB Approval Date

Not applicable.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

Not applicable.

B. Statistical Methods

Not applicable.