

**SUPPORTING STATEMENT FOR FINAL RULE AMENDMENT
UNDER THE SECURITIES ACT OF 1933**

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

On July 18, 2018, the Securities and Exchange Commission (the “Commission”) adopted a final rule amendment to Rule 701 under the Securities Act of 1933 (the “Securities Act”). The amendment implements Section 507 of the Economic Growth, Regulatory Relief, and Consumer Protection Act¹ (the “Act”), which became law on May 24, 2018. Section 507 of the Act directs the Commission, not later than 60 days after the date of enactment, to revise Rule 701 to increase from \$5,000,000 to \$10,000,000 the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required under such section to deliver an additional disclosure to investors. A copy of Commission Release No. 33-10520, which contains the final amendment, is attached.

The title for the affected collection of information is:

Rule 701 (OMB Control No. 3235-0522)

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The final amendment amends Rule 701 to implement the mandated increase from \$5,000,000 to \$10,000,000 the aggregate sales price or amount of securities sold during any consecutive 12-month period in excess of which the issuer is required under such section to deliver additional disclosure to investors. This disclosure constitutes a collection of 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 amendment does not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The amendment may potentially affect any issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (a “non-reporting company”), its parents, its majority-owned subsidiaries or majority-owned subsidiaries of its parent, that offer and sell securities under compensatory benefit plans or written agreements relating to compensation. This group of issuers includes small entities.

¹ Pub. L. No. 115-174, 132 Stat. 1296 (2018).

The amendment will reduce the economic burden associated with Rule 701 for those issuers that sell securities in compensatory benefit plans in the \$5 million to \$10 million range over a 12-month period.

6. CONSEQUENCES OF NOT CONDUCTING COLLECTION

Rule 701 was adopted under the Securities Act and sets forth the requirements for non-reporting companies to conduct compensatory securities offerings on a basis that is exempt from the registration requirements of the Securities Act. The legislative intent for collection of this information requires that the information be available prior to the making of the investment decision.

7. SPECIAL CIRCUMSTANCES

Not applicable.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission did not solicit comment on the amendment in implementing this legislative mandate.

9. PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. CONFIDENTIALITY

Not applicable.

11. SENSITIVE QUESTIONS

No information of a sensitive nature, including social security numbers, will be required under this collection of information. The information collection does not collect personally identifiable information (PII). The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. and 13. ESTIMATE OF HOUR AND COST BURDENS

The amendment will reduce the current burden estimates associated with Rule 701 for those issuers that sell securities in compensatory benefit plans in the \$5 million to \$10 million range over a 12-month period, especially for those issuers that do not otherwise prepare the same types of disclosure in their normal course of business. We derive our burden hour estimate by estimating the average amount of time it would take an issuer to prepare the disclosure. While we estimate that there are 16,491 non-reporting companies conducting capital-raising offerings of securities pursuant to other exemptions from Securities Act registration, some of these issuers may currently be too small to offer securities in compensatory benefit plans in excess of \$5 million over a 12-month period. For purposes of the Paperwork Reduction Act, we estimate that approximately 10% of these issuers (1,600) currently provide disclosure under Rule 701, and that the number of burden hours per respondent is two. We estimate that the amendment will impact one-half of the issuers that currently provide information under Rule 701, or 800 issuers. We therefore estimate the total annual decrease in the paperwork burden for all affected companies to comply with the collection of information requirements of Rule 701, as amended, will be approximately 1,600 hours (800 issuers x two burden hours), allocated 25% to company personnel time and 75% to external costs.

The table below shows the total annual compliance burden, in hours and in costs, of the collection of information resulting from the final amendment.² The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant issuer to prepare and review Rule 701 disclosure. For purposes of the PRA, we estimate that 25% of the burden of preparation is carried by the issuer internally, which is reflected in hours, and that 75% of the burden is attributed to outside costs, estimating \$400 per hour as the professional cost per burden hour .

Table 1. Decrease in Paperwork Burden under the interim final amendment.

	Estimated number of affected responses (A)	Decrease in burden hours per response (B)	Total decrease in burden hours (C)=(A)*(B)	25% Company (E)=(C)*0.25	75% Professional (E)=(C)*0.75	Professional Costs (F)=(E)*\$400
Rule 701(e) disclosure	800	2	(1,600)	(400)	(1,200)	(\$480,000)

14. COSTS TO FEDERAL GOVERNMENT

The estimated cost of preparing the final amendment was approximately \$50,000.

² For convenience, the estimated hour and cost burdens in the table have been rounded to the nearest whole number.

15. REASON FOR CHANGE IN BURDEN

The amendment will reduce the burdens for non-reporting issuers who rely on Rule 701 to make exempt compensatory offerings in the \$5 million to \$10 million range over a 12-month period. Table 2 below illustrates the changes in hour burden estimates currently approved by OMB. Column (A) represents the most recent burden estimate submitted to OMB. Column (B) represents the new burden estimate under the amendment. Column (C) represents the program change, which encompasses the change in the burden estimate attributable to the amendment.

Table 2.

	Current Burden		Change in Burden		Program Change	
	Burden Hours (A)	Cost (B)	Burden Hours (C)	Costs (D)	Burden Hours (E)	Cost (F)
Rule 701	800	\$960,000	(400)	(\$480,000)	400	\$480,000

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

Not applicable.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

The Commission is not seeking approval to omit the expiration date.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

Not applicable.

B. STATISTICAL METHODS

Not applicable.