

**SUPPORTING STATEMENT FOR PROPOSED RULES
UNDER THE SECURITIES ACT OF 1933**

This submission, pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, et seq., consists of this supporting statement and Release No. 33-10891.

A. JUSTIFICATION

1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION NECESSARY

In Release No. 33-10891,¹ the Commission proposed amendments to Rule 701 and Form S-8 under the Securities Act of 1933. Form S-8 sets forth the disclosure requirements for a registration statement for securities to be offered by an issuer that is subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) (a “reporting issuer”) under an employee benefit plan to its employees, or employees of a subsidiary or parent company, to help such investors make informed investment decisions. Rule 701 provides an exemption from registration for offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation by an issuer that is not subject to the reporting requirements of the Exchange Act (a “non-reporting company”). Issuers conducting compensatory benefit plan offerings in excess of \$10 million in reliance on Rule 701 during any consecutive 12-month period are required to provide plan participants with certain disclosures, including financial statement disclosures. This disclosure constitutes a collection of information. A copy of Commission Release No. 33-10891, which contains the proposed amendments, is attached.

The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles for the affected collections of information are:

Rule 701 (OMB Control No. 3235-0522); and
Form S-8 (OMB Control No. 3235-0066).

2. PURPOSE AND USE OF THE INFORMATION COLLECTION

The purpose of the proposed amendments is to modernize the two principal means by which issuers grant securities to employees in compensatory transactions.

The proposed amendments would revise Rule 701 to:

- Provide that, if the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds \$10 million, the issuer must deliver to investors the

¹ Modernization of Rules and Forms for Compensatory Securities Offerings and Sales, Release No. 33-10891 (Nov. 24, 2020) 85 FR 80232 (the “Proposing Release”).

additional disclosure required by the rule only for sales that exceed the rule's \$10 million threshold;

- Reduce the frequency at which Rule 701(e) financial statements must be updated to no more frequently than on a semi-annual basis;
- Allow foreign private issuers that are eligible for the exemption from Exchange Act registration provided by Exchange Act Rule 12g3-2(b)² to provide financial statements prepared in accordance with home country accounting standards without reconciliation to U.S. GAAP, if financial statements prepared in accordance with U.S. GAAP or IFRS as issued by the IASB are not otherwise available;
- Allow issuers to provide an independent valuation report of the securities' fair market value as determined by an independent appraisal consistent with the rules and regulations under Internal Revenue Code Section 409A,³ in lieu of financial statements;
- Raise two of the three alternative regulatory ceilings that cap the overall amount of securities that an issuer may sell pursuant to the exemption during any consecutive 12-month period; and
- Expand eligibility to specified consultant entities, employees of all subsidiaries, and specified former employees of the issuer and acquired companies.

The proposed amendments would revise Form S-8 to:

- Clarify that issuers may add multiple plans and allocate securities among multiple plans on a single Form S-8;
- Permit addition of securities or classes of securities by automatically effective post-effective amendment;
- Permit registration of an indeterminate amount of securities for defined contribution plans;
- Implement a new fee calculation and payment method for defined contribution plans;
- Conform S-8 instructions to current Internal Revenue Service review practices and eliminate the requirement to describe the tax effects of plan participation on the issuer; and

² 17 CFR § 230.12g3-2(b).

³ 26 U.S.C. § 409A ("IRC Section 409A").

- Expand eligibility to specified consultant entities and specified former employees of the issuer and acquired companies.

3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY

The collection of information requirements of the proposed amendments would affect Securities Act registration statements on Form S-8. These forms are filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system.

Under Rule 701 and the proposed amendments, the information to be collected 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

We believe that the proposed amendments would not duplicate, overlap, or conflict with other federal rules.

5. REDUCING THE BURDEN ON SMALL ENTITIES

The proposed amendment to Rule 701 may potentially affect any non-reporting issuer, its parents, its subsidiaries or 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. The proposed amendments will reduce the economic burden associated with Rule 701 for those issuers that sell securities in compensatory benefit plans in excess of \$10 million over a 12-month period.

The proposed amendments to Form S-8 will affect some issuers that are small entities and are subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

The Commission estimates that there are approximately 52 currently reporting issuers that filed a Form S-8 in 2019 that qualify as small entities that would be eligible to rely on the proposed amendments, but lacks sufficient data to similarly estimate the number of small, non-reporting issuers that may be affected.

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. If a non-reporting issuer sells in excess of \$10 million of securities during a 12-month period pursuant to a compensatory offering and does not provide investors the disclosure required by the rule, the Rule 701 exemption from registration is not available for that offering.

Form S-8 sets forth the disclosure requirements for statements for compensatory offerings by reporting issuers to help investors make informed investment decisions. This disclosure must be provided to comply with the requirements of the Securities Act.

7. SPECIAL CIRCUMSTANCES

There are no special circumstances in connection with these amendments.

8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY

The Commission issued a Concept Release soliciting comment on the topics addressed by the Proposing Release.⁴ The Concept Release did not solicit comment on “collection of information” requirements and associated paperwork burdens. Comments on the Commission’s releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in an ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. The Commission considers all comments received. Comments received on the Concept Release are available at <https://www.sec.gov/comments/s7-18-18/s71818.htm>.

Commission staff consulted with staff of the Department of Treasury regarding aspects of the proposal that relate to the requirements of IRC Section 409A and Internal Revenue Service review practices for tax-qualified compensatory plans.

9. PAYMENT OR GIFT TO RESPONDENTS

No payment or gift to respondents.

10. CONFIDENTIALITY

All documents submitted to the Commission are available to the public

11. SENSITIVE QUESTIONS

No information of a sensitive nature will be required under the following collection of information in connection with these rulemaking amendments: Form S-8 basic personally identifiable information (PII) that may include a name and job title. However, the agency has determined that this information collection does not constitute a system of record for purposes of the Privacy Act. Information is not retrieved by a personal identifier. In accordance with Section 208 of the E-Government Act of 2002, the agency has conducted a Privacy Impact Assessment (PIA) of the EDGAR system, in connection with this collection of information. The EDGAR PIA, published on February 5, 2020, is provided as a supplemental document and is also available at <https://www.sec.gov/privacy>

No information of a sensitive nature, including social security numbers, will be required under this collection of information. Rule 701 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

⁴ Concept Release on Compensatory Securities Offerings and Sales, Release No. 33-10521 (July 18, 2018) [83 FR 34958] (“Concept Release”).

12. and 13. ESTIMATE OF HOUR AND COST BURDENS

The paperwork burden estimates associated with the proposed rule amendments include the burdens attributable to collecting, preparing, reviewing and retaining records. We expect that the impact of the proposed amendments will be a reduction in the paperwork burden for all issuers, including small entities.

The proposed amendments to Form S-8 will clarify that issuers may add multiple plans and allocate securities among multiple plans on a single Form S-8; permit addition of securities or classes of securities by automatically effective-post effective amendment; permit registration of an indeterminate amount of securities for Defined Contribution Plans; and implement a new fee calculation and payment method for Defined Contribution Plan. We expect that these proposed amendments will reduce the number of initial Forms S-8 filed annually, and correspondingly increase the number of post-effective amendments to Form S-8 filed annually, and the net effect to be no change in the PRA burden per response and no change in the number of responses.

We expect that the proposal to conform Form S-8 instructions to current IRS plan review practices and eliminate the requirement to describe the tax effects of plan participation on the registrant will decrease the PRA burden per response by 1 hour. We expect that the proposal to expand eligibility to specified consultant entities and specified former employees of the registrant and acquired companies will result in no change in the PRA burden per response or the number of responses.

Elimination of the requirement to provide Rule 701(e) disclosure to investors who purchase before the \$10 million threshold is crossed would permit issuers who did not provide such disclosure to continue relying on the exemption after crossing the \$10 million threshold. It would also allow issuers to avoid providing such disclosure as a precautionary measure in offerings where it is unclear whether the threshold will be crossed. We expect the net effect on the number of responses to be 40 additional responses, with no change in the PRA burden per response.

The proposed amendments also would reduce the frequency of Rule 701(e) financial statement updates; allow Rule 12g3-2(b) eligible foreign private issuers to disclose financial statements that are not reconciled to U.S. GAAP; and allow issuers to disclose valuation information consistent with IRC Section 409A rather than financial statements. We expect these proposals to decrease PRA burden per response by 0.5 hours.

We expect no change in PRA burden per response or number of responses from the proposals to increase the assets cap to 25% and increase dollar cap to \$2 million and expand eligibility to specified consultant entities, employees of all subsidiaries, and specified former employees of the issuer and acquired companies.

The table below illustrates the expected incremental change to the annual compliance burden of the affected collection of information, in hours and in costs. 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 the disclosure. For

purposes of the PRA, we estimate that for Rule 701, 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. For Form S-8, we estimate that 50% of the burden of preparation is carried by the issuer internally, which is reflected in hours, and that 50% of the burden is attributed to outside costs. For both rules, we estimate \$400 per hour as the average cost of retaining outside professionals.

Table 1.

Collection of Information	Number of Estimated Affected Respondents (A)	Burden Hour Annual Decrease Per Affected Respondent (B)	Decrease in Burden Hours For Affected Respondents (C) = (A) x (B)	Decrease in Internal Burden Hours for Affected Respondents (D) = (C) x 0.5 or 0.25	Decrease in Professional Hours for Affected Respondents (E) = (C) x 0.5 or 0.75	Decrease in Professional Costs for Affected Respondents (F) = (E) x \$400
Form S-8	230	(1)	(230)	(115)	(115)	(\$46,000)

Collection of Information	Current Annual Responses (A)	Burden Hour Annual Decrease per Affected Respondent (B)	Decrease in Burden Hours for Current Respondents (C) = (A) x (B)	Increase in Number of Affected Respondents (D)	Burden Hour Increase From Additional Respondents (E) = (D) x 1.5	Total Decrease in Burden Hours for All Respondents (F) = (C)+(E)	Decrease in Internal Burden Hours for All Respondents (G) = (F) x 0.25	Decrease in Professional Costs for All Respondents (H) = (F) x 0.75 x \$400
Rule 701	800	(0.5)	(400)	40	60	(340)	(85) ⁵	(\$102,000) ⁶

⁵ This represents a reduction of (.25 X 400) in the burden hours of the existing 800 respondents, as the PRA burden per response declines from 2 to 1.5 hours, plus (40 X 1.5 X .25) for the additional burden hours attributable to 40 additional responses. The math calculation for the 800 respondents existing burden hours is 400-100=300, then the calculation for the reduction of the total hours per response from 2 to 1.5 is (40 x 1.5 x 0.25) =15 for the additional 40 respondents. The incremental burden calculation for the reduction for existing burden hours is reduction of (100) + 15(new increase for additional 40) = (85).

⁶ This represents \$120,000 reduction in existing cost for existing 800 respondents, plus \$18,000 additional cost from adding 40 responses. 0.75 X 400 X \$400 = (\$120,000) + (40 x 1.5 x .75) = \$18,000 = \$102,000.

14. COSTS TO FEDERAL GOVERNMENT

The annual cost of reviewing and processing disclosure documents, including registration statements, post-effective amendments, proxy statements, annual reports and other filings of operating companies amounted to approximately \$103,479,690 in fiscal year 2019, based on the Commission's computation of the value of staff time devoted to this activity and related overhead.

15. REASON FOR CHANGE IN BURDEN

As explained in further detail above, the proposed amendments to Rule 701 and Form S-8 are designed to modernize the exemption and registration statement in light of the significant evolution in compensatory offerings since the Commission last substantively amended these regulations, consistent with investor protection. The proposed amendments will reduce the burden for issuers making compensatory offerings under both Rule 701 and Form S-8. Table 2 below illustrates the changes in hour burden estimates currently approved by OMB.

Table 2.

Form	Current Burden			Program Change			Requested Change in Burden		
	Current Annual Responses	Current Burden Hours	Current Cost Burden	Number of Affected Responses	Change in Company Hours	Change in Professional Costs	Requested Annual Responses	Requested Burden Hours	Cost Burden
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Form S-8	2,140	28,890	\$11,556,000	230	(115)	(\$46,000)	2,140	28,775	\$11,510,000
Rule 701	800	400	\$480,000	840	(85)	(\$102,000)	840	315	\$378,000

16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES

The information collections do not employ statistical methods.

17. APPROVAL TO OMIT OMB EXPIRATION DATE

We request authorization to omit the expiration date on the electronic version of the form. Including the expiration date on the electronic version of the form will result in increased costs, because the need to make changes to the form may not follow the application's scheduled version release dates. The OMB control number will be displayed.

The Commission is not seeking approval to omit the expiration date for Rule 701.

18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS

There are no exceptions to certification for the Paperwork Reduction Act submissions.

B. STATISTICAL METHODS

The information collections do not employ statistical methods.

Rule 701 Short Statement

The proposed amendments to Rule 701 under the Securities Act of 1933 would reduce an issuer's paperwork burden by reducing the frequency of Rule 701(e) financial statement updates; allowing Exchange Act Rule 12g3-2(b) eligible foreign private issuers to disclose financial statements that are not reconciled to U.S. GAAP; and allowing issuers to disclose valuation information consistent with IRC Section 409A rather than financial statements. For purposes of the PRA, we estimate that, for Rule 701, the proposed amendments would result in a reduction of 85 internal burden hours and a reduction in the cost burden of \$102,000 for the services of outside professionals.

Form S-8 Short Statement

The proposed amendments to Form S-8 under the Securities Act of 1933 would reduce a registrant's paperwork burden by conforming Form S-8 instructions to current IRS plan review practices and eliminating the requirement to describe the tax effects of plan participation on the registrant. For purposes of the PRA, we estimate that, for Form S-8, the proposed amendments would result in a reduction of 115 internal burden hours and a reduction in the cost burden of \$46,000 for the services of outside professionals.