

**SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT  
SUBMISSION FOR PROPOSED TEMPORARY RULE AMENDMENTS TO INCLUDE  
CERTAIN “PLATFORM WORKERS” IN COMPENSATORY OFFERINGS UNDER  
RULE 701 AND FORM S-8**

This supporting statement is part of a submission under the Paperwork Reduction Act of 1995, 44 U.S.C. §3501, *et seq.*

**A. JUSTIFICATION**

**1. CIRCUMSTANCES MAKING THE COLLECTION OF INFORMATION  
NECESSARY**

In Securities Act Release No. 33-10892 (the “Proposing Release”), the Commission proposed amendments that, on a temporary basis, would permit an issuer to offer and sell securities in compensatory transactions to workers who provide services available through the issuer’s internet-based marketplace platform, or through another widespread, technology-based marketplace platform or system (“platform workers”) under Securities Act Rule 701 or Form S-8 as long as certain conditions are met. The proposed amendments contain “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995. The titles of the 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**

Rule 701 provides an exemption from the registration requirements of Securities Act Section 5 for offers and sales of securities by non-reporting companies to their employees, officers, directors, trustees, consultants, or advisors under written compensatory benefit plans or written agreements relating to compensation. 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.<sup>1</sup> This disclosure constitutes a collection of information. Form S-8 is the simplified form for the registration of securities transactions involving an issuance to a registrant’s employees (as defined by the form) in a compensatory or incentive context and for a non-capital-raising purpose. Both Rule 701 and Form S-8 reflect the Commission’s long-standing position that offers and sales of securities for compensatory purposes raise different issues, and therefore warrant different treatment, than offers and sales of securities for capital raising purposes.

The proposed amendments would modernize Rule 701 and Form S-8 to address the new types of work relationships between companies and individuals that have emerged in the so-called “gig economy.” These have arisen in large part due to the internet and typically have

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<sup>1</sup> See 17 CFR 230.701(e).

involved an individual's use of a company's internet "platform" to find a particular type of work, or "gig" (i.e., task or job). The work could involve the individual providing services to end users, such as ride-sharing, food delivery, household repairs, dog-sitting, or tech support, or using the platform to sell goods or lease property to third parties.

The proposed amendments would amend Rule 701 by adding a temporary rule provision that, for five years, would enable issuers to use Rule 701 to compensate certain "platform workers," subject to specified conditions. Under the amendments, an issuer would be able to use the Rule 701 exemption to offer and sell its securities on a compensatory basis to platform workers who, pursuant to a written contract or agreement, provide bona fide services by means of an internet-based platform or other widespread, technology-based marketplace platform or system provided by the issuer if:

- the issuer operates and controls the platform, as demonstrated by its ability to provide access to the platform, to establish the principal terms of service for using the platform and terms and conditions by which the platform worker receives payment for the services provided through the platform, and by its ability to accept and remove platform workers participating in the platform;
- the issuance of securities to participating platform workers is pursuant to a compensatory arrangement, as evidenced by a written compensation plan, contract, or agreement, and is not for services that are in connection with the offer or sale of securities in a capital-raising transaction, or services that directly or indirectly promote or maintain a market for the issuer's securities;
- no more than 15% of the value of compensation received by a participating worker from the issuer for services provided by means of the platform during a 12-month period, and no more than \$75,000 of such compensation received from the issuer during a 36-month period, shall consist of securities, with such value determined at the time the securities are granted;
- the amount and terms of any securities issued to a platform worker may not be subject to individual bargaining or the worker's ability to elect between payment in securities or cash; and
- the issuer must take reasonable steps to prohibit the transfer of the securities issued to a platform worker pursuant to this exemption, other than a transfer to the issuer or by operation of law.

The proposed amendments would also permit an Exchange Act reporting company to make registered securities offerings to its platform workers using Form S-8. The same conditions proposed for Rule 701 issuances would apply to issuances to platform workers on Form S-8, except for the proposed transferability restriction. The proposed conditions are intended to facilitate compensatory transactions with platform workers while limiting the possibility that the amendments could result in offers and sales for capital-raising purposes.

The proposed amendments would also require an issuer to provide certain information every six months concerning issuances to platform workers. This information would assist the Commission in evaluating the expanded use of Rule 701 and Form S-8 in order to help determine whether to permit such use on a permanent basis and under the same or different conditions.

### **3. CONSIDERATION GIVEN TO INFORMATION TECHNOLOGY**

Form S-8 is filed electronically with the Commission using the Commission's Electronic Data Gathering and Retrieval (EDGAR) system. The information required to be furnished every six months under the proposed amendments would be furnished in a non-public manner designated by the Division of Corporation Finance for this purpose, for example, electronically by email or by some other means of electronic communication.

### **4. DUPLICATION OF INFORMATION**

The Commission makes every effort to coordinate with other regulatory entities when necessary or appropriate in the public's interest and for the protection of investors and to streamline regulations to enhance the production of capital. We are not aware of any U.S. forms or rules that conflict with or substantially duplicate the requirements of Rule 701 or Form S-8.

### **5. REDUCING THE BURDEN ON SMALL ENTITIES**

The proposed amendments would apply only to issuers whose platform workers provide services; they would not apply to issuers whose platform workers are providing goods. We estimate that there are only a limited number of companies with platforms providing services that would be affected by the proposed rules.<sup>2</sup> Although it is possible that the proposed amendment to Form S-8 could cause a small entity to file a Form S-8 for the issuance of securities to its platform workers, based upon staff review of Commission filings during 2018-2019, and due to the resulting burden and expense, we do not believe that this outcome is likely.<sup>3</sup> Rule 701 applies only to non-public companies. Because there is a lack of information concerning the assets of potentially affected non-public companies, it is difficult to estimate with certainty the number of non-public issuers that qualify as small entities that would be eligible to rely on the proposed amendment to Rule 701 or that would choose to become public companies and then rely on the proposed amendment to Form S-8.

We believe that the proposed amendment to Rule 701 could be of particular benefit to small entities, which may be financially constrained, by enabling them to issue securities as compensation, instead of cash, within the proposed limits. This could help small entities attract potential workers and enhance their competitive position. In contrast, we do not believe that the compliance burden of the proposed Rule 701 amendment, including the information-furnishing

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<sup>2</sup> Based upon a review of Commission filings and other relevant data for 2018-2019, the staff estimated that the proposed rules would affect 122 companies, 17 of which are public and 105 of which are private.

<sup>3</sup> None of the 17 Forms S-8 filed by issuers with service-providing platforms were small entities.

requirement, would be significant.<sup>4</sup> We believe that it is unlikely that a small entity would reach the annual \$10,000,000 threshold that would require it to provide financial information pursuant to Rule 701(e).

## **6. CONSEQUENCES OF NOT CONDUCTING COLLECTION**

The rule and form listed above set forth the conditions and disclosure requirements for compensatory issuances of securities to an issuer's employees, consultants, or advisors. The proposed amendments would temporarily add a new class of workers, "platform workers," to the list of persons eligible to receive securities under Rule 701 or on Form S-8. Failure to conduct these collections of information would reduce the investment opportunities of such persons and information available to them as investors.

## **7. SPECIAL CIRCUMSTANCES**

There are no special circumstances in connection with the proposed amendments.

## **8. CONSULTATIONS WITH PERSONS OUTSIDE THE AGENCY**

In July 2018, the Commission published a concept release to solicit comment on whether and how best to modernize the exemption under Rule 701 and to update Form S-8. In the release, the Commission requested comment on how to address, consistent with investor protection, the significant evolution that has taken place in the types of issuer compensatory offerings and the composition of the workforce since the Commission last substantively amended this rule and form.<sup>5</sup> Regarding workforce changes, the Commission focused on the new types of work relationships between companies and individuals that have emerged in the so-called "gig economy." Several commenters on the Concept Release stated that, given the characteristics of these new work relationships, the individual workers might not be employees, consultants, advisors, or de-facto employees eligible to receive securities in compensatory arrangements under Rule 701 or on Form S-8. Those commenters recommended expanding the scope of Rule 701 and Form S-8 to include offerings to gig economy workers (also known as "platform workers"). Comments received on the Concept Release are available at <https://www.sec.gov/comments/s7-18-18/s71818.htm>.

The Commission issued Securities Act Release No. 33-10892 to solicit comment on extending the "collection of information" requirements and associated paperwork burdens of Rule 701 and Form S-8 to compensatory issuances to platform workers on a trial basis (for five years). Issuers, investors, industry groups, civil society organizations, and other market participants may provide comments in response to the solicitation for comment in the Proposing Release. In addition, the Commission and staff may participate in ongoing dialogue with

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<sup>4</sup> As discussed below, we estimate that the compliance burden associated with furnishing the required information under the proposed Rule 701 amendment would be 1.5 hours for each semi-annual disclosure per issuer, or a total of 3 hours per issuer on an annual basis.

<sup>5</sup> See *Concept Release on Compensatory Securities Offerings and Sales*, Release No. 33-10521 (July 18, 2018) [83 FR 34958 (July 24, 2018)] ("Concept Release").

representatives of various interested parties through meetings, public conferences, and roundtables.

## **9. PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift to respondents.

## **10. CONFIDENTIALITY**

Form S-8 is a public document. Rule 701 applies solely to non-public issuers. The proposed amendments would require issuers providing securities to platform workers under either Rule 701 or on Form S-8 to provide certain information about such issuances every six months to the Commission on a non-public basis.

## **11. SENSITIVE QUESTIONS**

No information of a sensitive nature will be required under the following collection of information in connection with these rulemaking amendments: The information collection of Form S-8 collects basic Personally Identifiable Information (PII) that may include name, telephone number and job title. However, the agency has determined that the 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

Some of the information proposed to be required under the amendments every six months includes information about an issuer's platform workers and non-platform workers that some issuers may deem commercially sensitive. The proposed amendments would enable issuers to submit the required information on a non-public basis and to apply for confidential treatment of such submissions under existing Commission rules.

## **12/13. BURDEN OF INFORMATION COLLECTION AND COSTS TO RESPONDENTS**

The estimated burden hours and cost burden are made solely for the purposes of the Paperwork Reduction Act and represent the average burden for all issuers. The cost burden is not derived from a comprehensive or even a representative survey of the costs of Commission rules and forms.

We currently estimate for Form S-8 that there are 2,140 responses per year, and that 50% of the burden per response is prepared internally by the issuer and 50% of the burden per response is prepared by outside professionals retained by the issuer at a cost of \$400 per hour.<sup>6</sup> We currently estimate that the preparation and filing of Form S-8 requires a total of 28,890 internal hours and outside professional costs of \$11,556,000 on average per year.

We currently estimate for Rule 701 that there are 800 responses per year, and that 25% of the burden per response is prepared internally by the issuer and 75% of the burden per response is prepared by outside professionals retained by the issuer at a cost of \$400 per hour. We currently estimate that the preparation and filing of financial information pursuant to Rule 701(e) requires a total of 400 internal burden hours and outside professional costs of \$480,000 on average per year.

The following table summarizes the estimated effects of the proposed amendments on the paperwork burdens associated with the affected collections of information.

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<sup>6</sup> We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of \$400 per hour. This estimate is based on consultations with several registrants, law firms, and other persons who regularly assist registrants in preparing and filing reports with the Commission.

**PRA Table 1. Estimated Paperwork Burden Effects of the Proposed Amendments**

Collection of Information	Proposed Amendment	Expected Estimated PRA Effect of Proposed Amendment	Current No. of Average Annual Responses	Estimated Increase in No. of Average Annual Respondents <sup>1</sup>
Form S-8	<ul style="list-style-type: none"> <li>• Would temporarily expand the scope of Form S-8 to include issuances to a registrant’s platform workers in addition to its employees.</li> <li>• Issuers would be required to furnish certain information every six months.</li> </ul>	<ul style="list-style-type: none"> <li>• Expected to increase the average annual number of Form S-8s filed during the temporary 5-year period.</li> <li>• Expected to increase PRA burden by 2 hours per affected respondent annually (<i>i.e.</i>, 1 hour for each semi-annual response).</li> </ul>	<ul style="list-style-type: none"> <li>• 2,140</li> <li>• 0</li> </ul>	<ul style="list-style-type: none"> <li>• 17</li> <li>• 17</li> </ul>
Rule 701	<ul style="list-style-type: none"> <li>• Would temporarily expand the scope of Rule 701 to exempt issuances to an issuer’s platform workers in addition to its employees.</li> <li>• Issuers would be required to furnish certain information every six months.</li> </ul>	<ul style="list-style-type: none"> <li>• Expected to increase average annual number of issuers required to provide Rule 701(e) disclosure because offers and sales to platform workers would be integrated with offers and sales to employees for purpose of determining whether an issuer has exceeded the \$10 million threshold under Rule 701(e).</li> <li>• Expected to increase PRA burden by 3 hours per affected respondent annually (<i>i.e.</i>, 1.5 hours for each semi-annual response).<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>• 800</li> <li>• 0</li> </ul>	<ul style="list-style-type: none"> <li>• 6</li> <li>• 105</li> </ul>

<sup>1</sup> These estimates are based on a study (described in Release No. 33-10892 as the “Farrell Study”), which identified 106 companies making payments to online platform workers providing services during 2012-2018. The staff updated this study’s findings using an assumed growth rate of 15 percent for such companies in 2019, which yielded an estimate of 122 companies making payments to platform workers as of calendar year-end 2019. Upon a review of Commission filings, the staff estimated that 17 of those companies are public, and 105 private. The staff further estimated that 5 percent of those private companies (six companies) would likely exceed the \$10,000,000 threshold for aggregate annual securities offerings to its employees and platform workers and would be required to provide the disclosure pursuant to Rule 701(e). In making this estimate, the staff relied on the PRA estimates in Release No. 33-10520, which increased the Rule 701(e) disclosure threshold from \$5,000,000 to \$10,000,000.

<sup>2</sup> We estimate a greater increase in the PRA burden for Rule 701(h)'s furnished disclosure provision because it would solicit more information compared to the similar proposed provision for Form S-8.

We estimate that the proposed amendments would change both the frequency of responses to, and the burden per response of, the existing collections of information. The burden increase estimates were calculated by multiplying the estimated increased number of responses by the increased estimated average amount of time it would take to prepare and review the disclosure required under the affected collection of information. The table below illustrates the incremental change to the annual compliance burden of the affected collections of information, in hours and in costs.



**PRA Table 2. Calculation of the Incremental Change in Burden Estimates of Current Responses Resulting from the Proposed Amendments**

<b>Collection of Information</b>	<b>Number of Estimated Affected Respondents</b>	<b>Burden Hour Annual Increase per Affected Respondent</b>	<b>Increase in Burden Hours for Affected Respondents</b>	<b>Increase in Internal Burden Hours for Affected Respondents</b>	<b>Increase in Professional Hours for Affected Respondents</b>	<b>Increase in Professional Costs for Affected Respondents</b>
	<b>(A)</b>	<b>(B)</b>	<b>(C) = (A) x (B)</b>	<b>(D) = (C) x 0.5 or 0.25</b>	<b>(E) = (C) x 0.5 or 0.75</b>	<b>(F) = (E) x \$400</b>
S-8 (including furnished disclosure)	17	29 <sup>1</sup>	493	246.5	246.5	\$98,600
Rule 701(e) + Rule 701(h) furnished disclosure	6	5 <sup>2</sup>	30	7.5	22.5	\$9,000
Rule 701 (only furnished disclosure)	99	3	297	74.25	222.75	\$89,100
Rule 701 (total)	105		327	81.75	245.25	\$98,100

<sup>1</sup> Based on the current OMB inventory of 27 annual burden hours per response + 1 burden hour for each semi-annual required furnished disclosure (2 additional annual burden hours) = an increase of 29 burden hours per response.

<sup>2</sup> Based on the current OMB inventory of 2 annual burden hours per response + 1.5 burden hours for each semi-annual required furnished disclosure (3 additional annual burden hours) = an increase of 5 burden hours per response.

The table below illustrates the program change expected to result from the proposed rule amendments together with the total requested change in reporting burden and costs.

**PRA Table 4. Requested Paperwork Burden under the Proposed Amendments**

Collection of Information	Current Burden			Program Change			Requested Change in Burden		
	Current Annual Responses (A)	Current Burden Hours (B)	Current Cost Burden (C)	Number of Affected Responses (D)	Change in Issuer Hours (E)	Change in Professional Costs (F)	Requested Annual Responses (G)	Requested Burden Hours <sup>1</sup> (H) = (B) + (E)	Cost Burden (I) = (C) + (F)
<b>S-8</b>	2,140	28,890	\$11,556,000	17	246.5	\$98,600	2,157	29,137	\$11,654,600
Rule 701	800	400	\$480,000	105	81.75	\$98,100	905	482 <sup>2</sup>	\$578,100

<sup>1</sup> Rounded to nearest whole number.

<sup>2</sup> Thus, the estimated change in internal burden would result in an annual internal burden per response of 2.13 hours, which is a slight increase in the current annual internal burden of 2 hours.  $482/.25 = 1,928$ ;  $1,928/905 = 2.13$ .

#### **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 in Items 12 and 13 above, the increase in burden for Form S-8 and Rule 701 results from both an increase in the annual number of Form S-8 and Rule 701 responses, and in the burden hours per response, estimated to result from the proposed amendments. Specifically, we estimate that the proposed amendments would result in an increase of 17 additional Form S-8 responses and 105 Rule 701 responses per year, which would increase the average annual number of responses for Form S-8 from 2,140 to 2,157, and the average annual responses for Rule 701 from 800 to 905. We also estimate that the proposed amendments would result in an increase in issuer burden hours for Form S-8 of 247 hours, which would increase the total number of annual internal burden hours from 28,890 hours to 29,137 hours; and in an increase in issuer burden hours for Rule 701 of 82 hours, which would increase the total number of annual internal burden hours from 400 hours to 482 hours. We further estimate that the proposed amendments would result in an increase in professional costs for Form S-8 of \$98,600, which would increase the total annual outside cost burden from \$11,556,000 to \$11,654,600; and in an increase of professional costs for Rule 701 of \$98,100, which would increase the total annual outside cost burden from \$480,000 to \$578,100.

## **16. INFORMATION COLLECTION PLANNED FOR STATISTICAL PURPOSES**

The information collection does not employ statistical methods.

## **17. APPROVAL TO OMIT EXPIRATION DATE**

We request authorization to omit the expiration date on the electronic version of Form S-8 for design and scheduling reasons. 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 EDGAR application's scheduled version release dates. The OMB control number will be displayed.

## **18. EXCEPTIONS TO CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS**

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

## **B. STATISTICAL METHODS**

The information collection does not employ statistical methods.

### **Short Statement for Form S-8**

Form S-8 is the simplified form for the Securities Act registration of securities transactions involving an issuance to a registrant's employees, as defined by the form, in a compensatory or incentive context and for a non-capital-raising purpose. The proposed amendments would amend Form S-8 to permit compensatory issuances to an issuer's platform workers. For purposes of the Paperwork Reduction Act, we estimate that the proposed amendments would result in: an increase of 17 additional Form S-8 responses per year, which would increase the average annual number of responses for Form S-8 from 2,140 to 2,157; an average annual increase in internal burden hours of 247 hours, which would increase the total number of annual internal burden hours from 28,890 hours to 29,137 hours; and an increase in professional costs of \$98,600, which would increase the total annual outside cost burden from \$11,556,000 to \$11,654,600.

### **Short Statement for Rule 701**

Rule 701 provides an exemption from the registration requirements of Securities Act Section 5 for offers and sales of securities by non-reporting companies to their employees, officers, directors, trustees, consultants, or advisors under written compensatory benefit plans or written agreements relating to compensation. 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. The proposed amendments would allow non-reporting issuers to issue securities to their platform workers for a compensatory purpose and on a trial basis. For purposes of the Paperwork Reduction Act, we estimate that the proposed amendments would result in: an increase of 105 additional Rule 701 responses per year, which would increase the average annual number of responses for Rule 701 from 800 to 905; an average annual increase in internal burden hours of 82 hours, which would increase the total number of annual internal burden hours from 400 hours to 482 hours; and an increase in professional costs of \$98,100, which would increase the total annual outside cost burden from \$480,000 to \$578,100.