

SUPPORTING STATEMENT FOR THE PAPERWORK REDUCTION ACT
INFORMATION COLLECTION SUBMISSION FOR RULE 701

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

Absent an available exemption, the Securities Act of 1933 (“Securities Act”) requires that a registration statement be filed with the Commission disclosing prescribed categories of information before securities may be offered for sale. Where a registration statement is required, securities may not be sold to the public until the registration statement becomes effective.

Congress recognized that in some situations there may not be a need for registration in connection with offers and sales of securities; it provided a number of exemptions from Securities Act registration and provided the Commission with authority to adopt exemptions from Securities Act registration.

Rule 701 (17 CFR 230.701) provides an exemption from Securities Act registration for an issuer that is not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (“non-reporting issuer”) for offers and sales of securities under a written compensatory benefit plan or written compensation contract established by the issuer (or its parents, its majority-owned subsidiaries, or majority-owned subsidiaries of the issuer’s parent) for the participation of their employees, directors, general partners, trustees, officers, or consultants and advisors, and their family members who acquire such securities from such persons through gifts or domestic relations orders. The total sales price or maximum amount of securities that may be sold under Rule 701 during any consecutive 12-month period must not exceed the greatest of: (1) \$1 million, (2) 15% of the total assets of the issuer (or its parent company if the issuer is a wholly-owned subsidiary, subject to certain conditions), or (3) 15% of the outstanding amount of the class of securities being offered and sold in reliance on Rule 701.

All issuers relying on Rule 701 must deliver to investors a copy of the compensatory benefit plan or contract. In addition, if the total sales price or amount of securities sold during any consecutive 12-month period exceeds \$10 million, the issuer must deliver the following additional disclosure to investors a reasonable period before the date of sale (or, for derivative securities, including options, the date of exercise or conversion, or, for deferred compensation or similar plans, the date the irrevocable election to defer is made): (1) 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 material terms of the plan, (2) information about risks associated with investment in the securities, (3) the financial statements required to be furnished by Part F/S of Form 1-A under Regulation A, and (4) parent financial statements (where the issuer uses its parent’s total assets to determine the amount of securities that may be sold).

2. Purposes and Use of the Information Collection

The purpose of Rule 701 is to enable non-reporting issuers to compensate employees and others without registering an offer and sale of securities under the Securities Act, while requiring issuers, as a condition of reliance on the rule, to provide investors with certain information that is important to investment decision making.

3. Consideration Given to Information Technology

The information required to be provided by issuers that rely on Rule 701 for an exemption from Securities Act registration requirements is provided to the investors who participate in the compensatory plan or contract (and not to the Commission) and may be electronically transmitted to investors.

4. Duplication of Information

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

5. Reducing the Burden on Small Entities

The Rule 701 exemption was designed to decrease costs and burdens for all non-reporting issuers, including small business issuers, by providing an exemption from Securities Act registration for offers and sales of securities to employees and others under compensatory benefit plans or contracts.

6. Consequences of Not Conducting Collection

Information is required under Rule 701 only when an issuer relies on the rule for an exemption from Securities Act registration. In these circumstances, if the information were not collected or were collected less frequently, then, in both cases, investors would lack information important to making an investment decision.

7. Special Circumstances

There are no special circumstances related to the manner of information collection in connection with Rule 701.

8. Consultations with Persons Outside the Agency

No comments were received on this request during the 60-day comment period prior to OMB's approval of this extension request.

9. Payment or Gift to Respondents

No payment or gift has been provided to any respondents.

10. Confidentiality

The information required to be provided by issuers that rely on Rule 701 for an exemption from Securities Act registration requirements is provided to the investors who participate in the compensatory plan or contract (and not to the Commission). Rule 701 does not contain any requirement that issuers must require investors who receive the information to keep the information confidential.

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. Estimate of Respondent Reporting Burden

Estimated Reporting Burden

Information Collection Title	OMB Control Number	Number of Responses	Burden Hours
Rule 701	3235-0522	3,725	1,863

For purposes of the Paperwork Reduction Act (“PRA”), we have estimated that Rule 701 takes approximately two hours per response to comply with the collection of information requirements and is relied upon by 3,725 issuers, each of whom makes one response annually under the rule. We have estimated the 3,725 total through two steps. First, we calculated the approximate number of exempt securities offerings under Regulation D, Regulation A, and Regulation Crowdfunding based on the average number of filings annually on Forms D, 1-A, and C (calculated for the period 2022 to 2024), which was 37,252 filings. Second, we estimated that 10 percent of those filings (or 3,725) would be made by non-reporting issuers that rely on Rule 701 for the purpose of offering compensation packages to attract and retain employees and others. We have further estimated that 25% of the collection of information burden is carried by the issuer internally and that 75% of the burden of preparation is carried by outside professionals retained by the issuer. Based on our estimates, we have calculated the total burden to be 1,863 hours ((25% x 2 hours per response) x 3,725 responses).

We have derived our burden hour estimates by estimating the average number of hours it would take an issuer to compile the necessary information and data, prepare and review disclosure, and distribute the disclosure documents to investors. We occasionally receive PRA estimates from public commenters about incremental burdens that are used in our burden estimates. We believe that the actual burdens will likely vary among individual issuers based on the nature of their operations. We have rounded up the total paperwork burden hours to the nearest whole number. The estimate of burden hours is made solely for the purpose of the PRA.

13. Estimate of Total Annualized Cost Burden

Estimated Cost Burden

Information Collection Title	OMB Control Number	Number of Responses	Cost Burden
Rule 701	3235-0522	3,725	\$3,352,500

We have estimated that 75% of the two hours per response (1.5 hours) is prepared by outside professionals. We have estimated an hourly cost of \$600 for outside professionals (such as those providing legal and accounting services). As a result, we have estimated a total cost burden of \$3,352,500 ($\600×1.5 hours per response $\times$ 3,725 responses). This estimate is based on our consultations with registrants and professional firms who regularly assist registrants in preparing and filing disclosure documents with the Commission. Our estimates reflect average burdens, and therefore, some issuers may experience costs in excess of our estimates and some issuers may experience costs that are lower than our estimates. We have rounded up the total paperwork cost burden to the nearest dollar. The estimated cost burden is made solely for the purposes of the PRA.

14. Costs to Federal Government

No filing is required to be made with the Commission under Rule 701, so no cost is attributed to the review and processing of the information.

15. Reason for Change in Burden

Changes in Responses, Burden Hours, and Cost Burden

Information Collection Title	OMB Control Number	Increase in Responses	Increase in Burden Hours	Increase in Cost Burden
Rule 701	3235-0522	2,925	1,463	\$2,872,500

The increase in burden hours of 1,463 (from 400 hours to 1,863 hours) is due to—and the increase of \$2,872,500 in cost burden (from \$480,000 to \$3,352,500) is due in part to—an increase in the estimated number of annual Rule 701 responses (from 800 responses to 3,725 responses). The increase in cost burden also reflects the Commission's increase in the cost burden per hour estimate from \$400 per hour to \$600 per hour for outside professionals.

16. Information Collection Planned for Statistical Purposes

The information collection is not planned for statistical purposes.

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

There are no exceptions to the certification statement for this PRA submission.

B. STATISTICAL METHODS

The information collection does not employ statistical methods.