



October 11, 2018

Via E-mail: rule-comments@sec.gov

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Concept Release on Compensatory Securities Offerings and Sales: File No. S7-18-18

Ladies and Gentlemen:

On behalf of Uber Technologies, Inc. ("Uber"), we appreciate the opportunity to comment with respect to the Securities and Exchange Commission's (the "Commission") review of Rule 701 under the Securities Act of 1933 (the "Securities Act") and Form S-8 pursuant to the Commission's concept release issued on July 18, 2018 and published in the Federal Register on July 24, 2018. (the "Concept Release")<sup>1</sup>. We commend the Commission for its engagement on issues related to compensatory securities offerings and sales in the context of what is commonly referred to as the "gig economy", or as Uber refers to it, the "entrepreneurial economy". We support the efforts of the Commission to modernize its rules to take into consideration the changing nature of work by individuals in the entrepreneurial economy.

As you may know, over the last few years we have had productive conversations with the staff in the Division of Corporation Finance of the Commission to explore ways in which we and other gig economy companies can allow our driver and delivery partners to receive equity from Uber and similar companies. We are very appreciative of the fact that the Commission is now considering whether and how it can make such distributions a possibility. As a company that has empowered millions of individuals around the world to take control of their lives through our technology platform, we believe that it is the proper role of public policy and key institutions as well as the private sector to explore avenues to give individuals greater economic security regardless of how they work.

Uber believes that work in the modern economy should be *empowering* (i.e., it should provide individuals with access to work and the ability to control the terms of that work), *entrepreneurial* (i.e., it should reward skill and effort) and *enriching* (i.e., it should enable workers to grow and achieve their personal aspirations). We believe that progress in developing alternative modes of offering securities to those that get work from digital marketplaces will go hand-in-hand with these goals.

As noted in the Concept Release, the Commission has historically recognized that the relationship between an issuer and a recipient of the issuer's securities is different when the issuance is compensatory in nature, as opposed to where the issuance takes place in a

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<sup>1</sup> Concept Release on Compensatory Securities Offerings and Sales, Release No. 33-10521 Jul. 18, 2018) [83 FR 34958 (Jul. 24, 2018)]

capital raising transaction. As discussed in the Concept Release, Uber and similar companies have provided individuals with access to more work options using technology. Unfortunately, however, individuals who take advantage of these options are not eligible to receive securities as compensatory awards from such companies because they are not employees of those companies. We believe that the Commission should revisit this approach.

In the absence of rule changes by the Commission, individuals and small businesses who find work principally through the entrepreneurial economy would be foreclosed from the opportunity to receive equity from the companies that they partner with. However, providing equity would allow partners to share in the growth of the company which could lead to enhanced earning and saving opportunities for the partner and for the generations ahead. It is due to these concerns that we would like to provide our views as to why the Commission's rules should be modified to address the evolution of alternative work arrangements and relationships between companies and gig economy participants.

Uber believes that individuals who get work through the entrepreneurial economy should be able to receive securities pursuant to an exempt offering under Rule 701 and also through a registered offering on Form S-8 from the companies with whom they partner. We believe that this is consistent with the intent and objective of Rule 701 and Form S-8 and, if the Commission were so inclined to determine so, would reflect the modern and changing nature of work.

#### **I. Individuals Participating in the Gig Economy Provide Bona Fide Services**

One of the key considerations under Rule 701 exempt offerings and offerings registered on Form S-8 relates to whether the individual that will receive securities as compensation provides bona fide services to the issuer, its parents, its majority-owned subsidiaries or majority-owned subsidiaries of the issuer's parent. We don't believe this requirement should be a prerequisite for a person to receive securities as compensation pursuant to Rule 701 or Form S-8.

The advent of digital platforms like Uber has offered individuals easier access to alternative work arrangements and earnings opportunities. In the case of Uber, for example, our driver partners use the platform to provide services to riders that are similar to the services that are provided to customers in the traditional economy. Along similar lines, delivery partners that use the UberEats platform provide services to restaurants and diners. A key fact regarding the driver and delivery partners that use our platform, however, is that they are not our employees, and instead are independent contractors that use our technology to deliver services. Notwithstanding this difference, however, the services they provide to riders and diners are the same services that would make them eligible to receive securities as compensation in a Rule 701 or Form S-8 offering if the SEC extended its approach to gig economy workers.

These examples demonstrate that the workplace has been rapidly changing since the Commission last amended Rule 701 and Form S-8 in 1999<sup>2</sup>. Now, instead of relying on traditional employment relationships to generate income, millions of individuals are using the entrepreneurial economy to generate work for themselves. In each of the above examples, independent contractors use technology provided by online platforms, to deliver services. Unlike traditional work arrangements, however, driver and delivery partners have greater flexibility as independent contractors to choose when and where they choose to work. These choices, when coupled with the technology underlying much of the

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<sup>2</sup> Release No. 33-7646 (Feb. 25, 1999) [64 FR 11103 (Mar. 8, 1999)]("1999 Release")

entrepreneurial economy, benefit consumers and the markets because they allow the supply of services to meet real-time consumer demands. More importantly, the services being delivered are the same as those historically delivered in the traditional economy, with the exception that the services are delivered more efficiently than had been the case before and that the services are being delivered by independent contractors and not employees.

## **II. Compensation Paid For Those Services Being The Primary Source Of The Person's Earned Income**

Uber believes that the question of whether compensation for a certain job is the worker's primary source of income should be irrelevant in assessing whether the worker should be able to receive securities in a non-capital raising context. For example, various technology platforms have made it easier for a person to take advantage of more than one work opportunity, including providing similar services by using technologies offered by multiple competitor companies or even providing services simultaneously through separate companies, and to earn a living as a participant in this entrepreneurial economy. As a result, workers are less likely to be able to point to one job as a primary source of income and many individuals participate as entrepreneurs gaining income through multiple sources of work. Requiring that a specific technology platform be the primary source of income for individuals would undermine the business model of an issuer and the reality of the modern economy. Further, from a broader public policy perspective, Uber believes it would also result in fewer participants in the modern economy being able to benefit from the wealth generation offered by digital marketplaces, even if the contribution of such participants to such wealth generation is comparable to the contributions of employees at traditional companies.

We believe the more important consideration under federal securities laws should be whether the securities are being issued for compensatory purposes and not to raise capital. Further, we believe that the close relationships that independent contractors have with technology platforms in the entrepreneurial economy, as well as the information that gig economy companies give to their independent contractor partners ensure that the issuance of securities in the context of those relationships will be consistent with the SEC's broader investor protection objectives. Here, we believe that public policy would be better served by eliminating or altering the requirement that an independent contractor derive a substantial portion of his or her income from the companies with which the contractor works. Instead, a substantial financial relationship, the availability of key financial information, and the absence of capital raising as an objective should provide a sufficient basis for allowing companies to issue securities as compensation to independent contractors in reliance on Rule 701 and pursuant to Form S-8.

## **III. Amendments to Rule 701 Should Extend to Form S-8 and Similar Rules**

The Concept Release focuses on Rule 701 under the Securities Act, but we believe that any amendments to Rule 701 should also be made to Form S-8 and other interpretations under the Securities Act. Historically, whenever the Commission has amended Rule 701 and/or Form S-8, most recently in the 1999 Release, the Commission generally has harmonized the scope of the amendments between Rule 701 and Form S-8. We hope that the Commission does the same here, most notably with respect to the scope of eligible individuals under both the form and the exemption. Uber believes such potential changes can still retain the compensatory purposes of Form S-8 and Rule 701 and avoid the potential abuse of the form and the exemption for capital-raising purposes.

#### **IV. Conclusion**

Uber thanks the Commission for the opportunity to provide these thoughts as we seek to provide an empowering, entrepreneurial and enriching experience for our partners. Uber respectfully requests that the Commission take our recommendations into account while contemplating changes to these rules and that changes be applied to both Form S-8 and Rule 701. We further welcome the opportunity to discuss our comments and recommendations with the Commission or the Commission staff. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read 'DB', with a long horizontal line extending to the right.

Danielle Burr  
Head of Federal Affairs  
Uber Technologies, Inc.