

OCTOBER 17, 2018

VIA EMAIL: Rule-comments@SEC.gov

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

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

Ladies & Gentlemen:

As a San Francisco based startup (and an on-demand delivery mobile marketplace), Postmates appreciates the opportunity to submit comments in response to the Securities and Exchange Commission's (SEC) request for comment on "Comment on Concept Release on Compensatory Securities Offerings and Sales." We are grateful that the SEC has expressed interest in investing in the economic mobility of a 21st century American workforce, especially the "gig economy," as it considers the modernization of 17 CFR 2030.701 (Rule 701).

Postmates is transforming the way goods move around cities by enabling anyone to have anything delivered on-demand. Our revolutionary urban logistics platform connects customers with a fleet of local independent couriers (or "Postmates") who can deliver products from any neighborhood store or local restaurant in minutes.

As the creator of a platform that facilitates on-demand 'anything,' Postmates gives customers, across 550 U.S. cities and Mexico City, access to over 200,000 merchants with real time deliveries. By creating an alternative infrastructure for local and small businesses to compete against online e-commerce giants, Postmates' technologies boosted local brick and mortar retail sales by 4X and empowered local businesses to sell \$1.2 billion worth of goods on the platform in 2017.

As a three-sided marketplace, Postmates knows that investing in the collective prospects of our local independent couriers, neighborhood merchant partners, and platform customers enables our whole ecosystem to grow and thrive. In particular, as an on-demand economy company, Postmates is able to offer unique services to customers because of the power of our national network of entrepreneurial couriers who access the platform to connect with customers and instantly supplement their incomes.

While we are proud that our Fleet earns significantly higher than minimum wage across jurisdictions, we are also committed to the long term upward mobility of our Postmates. That is why we are interested in exploring ways to connect our couriers to the opportunities, resources, and tools that can help them build greater economic certainty, within the confines of the law. To that end, we believe that enabling privately held companies to grant equity compensation to independent contractors (or "gig" workers) performing services on the platform, at an earlier

stage, would both enable platforms to attract and retain talent, while also diversifying the types of benefits gig-workers may derive from the on-demand economy. Postmates remains steadfast in its position that the future of work must be guided by technology firms, worker voice organizations, and governments coming together to forge a new social compact that reflects the modern way we live and work. And while we will continue to push for a multi-stakeholder process that explores ways to protect worker voice, invest in workforce development, and re-structure benefits for worker mobility -- exploring equity compensation for services performed on marketplace platforms, could be an important step in the direction of realizing long term economic certainty for America's flexible workforce.

To keep pace with evolutions in the economy and labor market, we support expanding eligible recipients under Rule 701(c) to include independent contractors and other personnel working under alternative or contingent relationships with issuers, including so-called "gig" workers. While we agree that such persons are generally not "employees" under traditional definitions of the term, we also believe that there is some ambiguity as to whether such persons would qualify as "consultants" or "advisors" for purposes of Rule 701, and expanding eligible recipients to explicitly include independent contractors and other personnel working under alternative or contingent relationships would clear up that ambiguity while permitting them to directly participate in the growth of the businesses they support.

We do not believe the terminology for describing gig and other nontraditional workers is as important as the type of services they contract with an issuer to provide. In this respect, Rule 701(c) provides two important limitations.

First, the worker must provide *bona fide* services to the issuer or its affiliates. Second, the worker's services must not be part of capital raising or market making activities. We believe the SEC should expand the scope of Rule 701 to any person who meets these two criteria for a given issuer, irrespective of whether the person is an independent contractor or is considered an employee, director, general partner, trustee, officer, consultant or advisor and irrespective of whether the worker provides services individually or through an entity established for the benefit of the worker. Third, it should be noted that any shifts to Rule 701 to provide equity should not negatively implicate the current body of analysis, case law, or federal labor laws surrounding the classification of independent contractors and the marketplace platforms those contractors can choose to perform services upon. As a technology platform that helps connect local merchants and couriers to customers requests, revisions to Rule 701 in equity grants for couriers would not change the reality that marketplace platforms, such as ours, do not exert control over how, when, or why an independent contractor performs services. An expansion of Rule 701, however, would be an important step in recognizing that offering worker protections and potential benefits, with flexible opportunities for independent contractors, is vital for guiding the future of work in the modern economy

The modernization of Rule 701 would also allow smaller, private sharing economy companies to better compete with larger and more established private and public companies, to the benefit of both the company and the individual providing the services.

Overall, we support targeted reforms to Rule 701 and Form S-8 that are intended to provide more flexibility to companies issuing stock, options, restricted stock units and other securities as equity compensation while maintaining a reasonable level of investor protection. Specifically we:

- We support expanding the class of eligible participants under Rule 701(c) and Form S-8 to include workers in the “gig” economy and other nontraditional working relationships.
- We urge the SEC to provide more flexibility under Rule 701 and Form S-8 for issuances to entities, rather than just natural persons, when those entities are established for the benefit of an eligible worker.
- We favor modifying the timing of required disclosure under Rule 701(e) to recipients of RSUs and similar equity awards until a reasonable period of time prior to the underlying security being issued.
- We request that the SEC modify Rule 701(e) to permit greater flexibility for equity awards assumed during a merger or other acquisition held by current or former service providers of the acquired company who do not become service providers of the acquirer so that these workers who have contributed to the acquired company have an opportunity to share in any success of the combined entity.
- We recommend that the SEC permit issuers under Form S-8 to satisfy the statutory prospectus requirement for ERISA plans by delivering an ERISA plan summary in lieu of a separate written prospectus.
- We request that the SEC permit an issuer to register an indeterminate number of shares under a particular plan or plans on Form S-8, then use a “pay as you go” method for calculating the applicable registration fee as shares are sold down off the registration statement.
- We support further study of whether to extend Rule 701 to public companies as long as such issuers also retain the right to offer shares, in the alternative and at their option, under Form S-8.
- Any change to Rule 701 should allow recipients of qualifying equity awards to be excluded as “holders of record” for the purposes of Section 12(g) of the Securities Exchange Act of 1934, as amended, in order for these changes to have a meaningful impact and benefit gig economy companies and their individual partners. If platforms, as issuers, are not permitted to exclude sharing economy partners from their number of “holders of record” for the purposes of Section 12(g); then few, if any, sharing economy companies, including Postmates, would be likely to utilize this process.

Postmates thanks the Commission for the opportunity to offer these comments as we seek to empower even more entrepreneurs to leverage choice and economic certainty in defining the dignity of work for the modern economy. We respectfully ask that the Commission take our

suggested comments into account, and that any changes contemplated apply to both Form S-8 and Rule 701. We also would very much welcome the chance to discuss the above with the Commission should any questions, comments or concerns arise.

Respectfully,

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Robert Rieders

Vice President of Public Policy &
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