VIA E-MAIL

February 10, 2021

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Ms. Countryman:

Re: Temporary Rules to Include Certain "Platform Workers" in Compensatory Offerings under Rule 701 and Form S-8 [File No. S7-19-20]

On behalf of the United Food and Commercial Workers International Union (UFCW), I am writing to provide comments on the U.S. Securities and Exchange Commission's proposed Temporary Rules to Include Certain "Platform Workers" in Compensatory Offerings under Rule 701 and Form S-8 (File No. S7-19-20). UFCW is the largest private sector union in the United States, representing 1.3 million professionals and their families in all 50 states, Canada, and Puerto Rico. The UFCW strongly opposes the proposed temporary rules that would allow "gig economy" technology platform marketplace companies to compensate their "platform workers" with securities for up to 15 percent of their total compensation.

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If adopted, the proposed rules will permit platform companies to offer and sell securities to platform workers who provide services through the issuer's technology-based marketplace platform. If the proposed rules are adopted, platform companies will no longer have to recognize their platform workers as employees to compensate them with equity. In effect, the proposed rules will treat platform workers as if they are employees of the platform company for purposes of Rule 701 and Form S-8. As a result, platform workers could see their cash compensation reduced by up to 15 percent in exchange for platform company securities that may be highly speculative, illiquid and inherently risky. Such a loophole will increase the economic incentives for platform companies to misclassify their platform workers as independent contractors.

The proposed rules will further tilt economic power away from platform workers in favor of platform companies. The proposed rules expressly prohibit giving platform workers any choice whether to receive cash compensation verses equity as part of their compensation package. Platform

companies will dictate the terms, and platform workers may only "take it or leave it." When classified as independent contractors, platform workers do not have the right to collectively negotiate the terms of their compensation under the National Labor Relations Act. Unlike employees, independent contractors do not enjoy a variety of legal protections including the minimum wage, overtime, unemployment insurance, workers' compensation, equal employment opportunity, and family and medical leave. And as independent contractors, platform workers do not have access to employer sponsored 401(k) plans or pension plans.

The proposed rules will disadvantage platform workers by stripping them of important securities law protections that protect investors from fraud and deception. These risks are heightened for Rule 701 offerings that are illiquid because of the prohibition on transferability of unregistered shares and subject to valuation risk given the lack of disclosure by non-reporting issuers. The majority of platform work is conducted on a temporary or part-time basis to help platform workers supplement their primary source of income. Platform workers do not have the same access to information about the financial condition of their platform company as compared to an employee of a technology startup venture, for example. This information asymmetry increases the risk that platform workers will be defrauded if they are paid in unregistered securities.

Nor are the proposed rules needed to provide platform workers with equity compensation. If platform companies want to provide platform workers with equity compensation under the current Rule 701 and Form S-8 provisions, they can simply choose to recognize their platform workers as their employees. The fact that few if any platform companies have elected to classify their platform workers as their employees suggests that providing equity compensation to these workers has not been important to their business models. Unlike CEOs and other senior executives, many platform workers are struggling to make ends meet and cannot afford the risks associated with equity compensation. Such equity compensation arrangements would be more appropriate for platform workers if platform companies would recognize them as employees with all the legal rights and protections that are provided to workers in an employment relationship.

The proposed rules make an arbitrary distinction between platform workers and other workers who work as independent contractors. Platform workers would be eligible for equity compensation, but not other self-employed workers such as freelancers. The proposed rulemaking provides no justification as to why equity compensation should be permitted simply because independent contractors are hired through technological means. Why should Rule 701 and Form S-8 make a distinction between hiring an independent contractor through a technology platform marketplace verses an in-person transaction? Under the proposed rules, a ridesharing platform company could compensate its drivers with securities, but a street hailed taxicab company would not be eligible to do

so. As a securities regulator, the SEC lacks the employment law expertise needed to make such a distinction between classes of independent contractors.

Finally, the proposed rules will likely lead to unexpected and unpredictable outcomes. The ambiguity in the proposed definition of a platform worker who provides "bona fide services" may result in the use of equity compensation for all sorts of economic transactions that go far beyond the provision of labor services as in a traditional employment relationship. For example, a platform company for bed and breakfast accommodations and vacation rentals could structure its compensation arrangements with its hosts as platform workers. Private rental hosts arguably provide "bona fide services" in the form of a temporary use license for rental property as well as housekeeping and other hospitality services to their guests. Will they be eligible for equity compensation as platform workers? If not, how are they different than a rideshare driver who provides access to their personal vehicle in addition to chauffeur services?

For these reasons, we strongly oppose the Commission's proposed temporary rules to include "platform workers" in compensatory offerings under Rule 701 and Form S-8. The current rules provide ample opportunity for platform companies to offer equity compensation to platform workers if they will only choose to recognize their platform workers as employees with all the legal rights associated with traditional employment relationships. We respectfully request that the Commission withdraw the proposed temporary rules in their entirety. If the UFCW can be of further assistance, please contact Assistant Director of the Capital Stewardship Office Aaron Brenner at [redacted] or [redacted].

Sincerely,

International President