By E-mail (rule-comments@sec.gov)

July 8, 2019

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Concept Release on Compensatory Securities Offerings and Sales
SEC File Number S7-18-18

Dear Mr. Fields:

Indigo Ag, Inc. ("Indigo") appreciates the opportunity to respond to the Securities and Exchange Commission's request for comments on the Commission's Concept Release on Compensatory Securities Offerings and Sales (SEC Release No. 33-10521).

About Indigo

Indigo is a privately-held beneficial agriculture company developing technologies, services, and products that harness nature to help farmers sustainably feed the planet. With its network of over 10,000 growers and farms, Indigo works alongside buyers, distributors, and users of agricultural goods to modernize our agriculture system to be more responsive to increasing consumer demand for high-quality and sustainably-produced food and fiber.

Indigo has been recognized as one of the most innovative companies in the world, recently earning the number one spot on CBNC's 2019 Disruptor 50 List and the thirty-fifth spot on FastCompany's Most Innovative Companies list.

Indigo's major product lines include: Indigo Marketplace, an e-commerce platform that connects growers and buyers of high-quality, sustainably-grown crops; Indigo Transport, an e-hauling platform that connects users and providers of agricultural products for the streamlined, traceable, and reliable transportation of agricultural freight; its patented microbiology seed treatment technology, which helps promote crop yield and resiliency in the face of environmental stress, while reducing the need for chemical and synthetic inputs; Indigo Atlas, a technology platform that provides a living map of the world's food supply; and Indigo Carbon, a market that supports the promotion and adoption of regenerative and sustainable agriculture practices as a way of helping to address the effects of the agriculture industry on climate change and the environment as a whole. These products and services, which span agriculture's value chain, seek to reorganize the agriculture system in a way that is more beneficial for growers, consumers, and the environment.

Founded in 2014 by Flagship Pioneering, Indigo has raised $650 million in private equity financing, employs over 950 people worldwide, and has offices in Boston, Massachusetts; Memphis, Tennessee; Research Triangle Park, North Carolina; Buenos Aires, Argentina; Mumbai, India; Basil, Switzerland; Sao Paulo, Brazil; and Sydney, Australia.

Rule 701(c) Eligible Participants – Overview

Indigo wishes to comment primarily on the types of persons eligible to receive awards under Rule 701. Indigo is seeking to transform the agriculture industry in a way that benefits all stakeholders: providing growers the opportunity to grow more high-quality crops and to sell those crops at premium prices, thus helping to improve farmer profitability; building a market for purchasers of crops to access high-quality, non-genetically modified, organic, sustainably grown and/or traceable crops, thus promoting consumer health and better food choices; and promoting and incentivizing sustainable and environmentally-conscious agricultural practices, thus helping to improve the environment. Indigo believes that expanding eligibility for equity awards under Rule 701 beyond traditional employees will directly support Indigo in its pursuit of its corporate mission and objectives by allowing it to promote and incentivize participation in its innovative products and services, including its marketplace-based services, unlocking significant potential for future innovation and economic development with benefits that extend well beyond Indigo itself. Broadening Rule 701 would promote participation in the new sharing or "gig" economy, which would not only help promote the development of new innovative products and services, but also provide expanded economic opportunities for participants in the new economy.

Indigo applauds the Commission's willingness to modernize Rule 701 to address a broader range of compensatory transactions in the current labor market, including the expansion of eligible participants to include persons who do not necessarily qualify as "employees," "consultants" or "advisors."

Indigo believes that traditional legal definitions of these terms are too narrow to capture many of the new forms of contractual relationships that have experienced explosive growth in the gig economy, including those popularized by companies such as Uber, Lyft, Etsy and Airbnb. In many cases, these companies – like Indigo – offer an online marketplace, platform or network where providers of goods or services can locate willing buyers. Companies in the sharing economy have already contributed billions of dollars to the U.S. economy and supported extensive job creation and economic opportunity, key goals of the JOBS Act. Yet many of the workers helping these companies to expand and grow are ineligible to receive equity compensation because they do not fit within the definition of employee, consultant or advisor. For example, very few of Indigo's growers – who sell their crops on the Indigo Marketplace and whose ongoing participation is vital to its success and expansion – are employees of Indigo in any sense of the word and could not reasonably be considered consultants or advisors in that capacity. Despite the fact that these growers' use of the Indigo Marketplace and other Indigo products and services is as vital to Indigo's success as the work of its employees, the growers lack the same opportunity to benefit from the equity value they are helping to build. Accordingly, without an expansion of Rule 701 to accommodate grants to a broader range of persons than the rule currently allows, Indigo's growers

– like many other participants in the new marketplace economy – will remain ineligible to receive equity compensation awards under Rule 701.

Indigo believes that the ability to grant equity compensation to participants in the Indigo Marketplace, drivers for Indigo Transport and other users of Indigo products and services would significantly enhance the growth and expansion of new economy companies while promoting the expansion of economic opportunity. In order to attract potential buyers to a new marketplace and retain their interest, the marketplace must quickly reach a critical mass of providers capable of satisfying demand. Without adequate supply on the marketplace, purchasers will not have any reason to use the marketplace service. The ability to offer equity compensation would help companies like Indigo to accelerate participation in their respective marketplaces by giving providers additional incentives to participate. Most private companies offering a new marketplace, platform or network have fewer options to raise capital than public companies, which limits the cash available to pay marketplace participants and makes equity compensation commensurately more attractive. Indigo believes that its ability to grow the Indigo Marketplace, expand opportunity for its growers and transform the agricultural industry would be significantly enhanced if it were able to offer its growers equity compensation as an incentive to sell their crops through the Indigo Marketplace or to otherwise use or be early adopters of other Indigo products and services. As a relatively new entrant into a significant and stable market that is already crowded with larger, more well-funded public companies, Indigo must work hard to convince growers to forego traditional market channels in favor of selling their crops through the Indigo Marketplace. Indigo believes that the ability to offer equity compensation to its growers would help it to differentiate itself by giving growers an opportunity to share in the success of the Indigo Marketplace through potential appreciation in the value of Indigo's stock.

Expanding Rule 701 would also help to level the playing field between private companies and public companies participating in the new economy. Public companies currently have the flexibility to offer equity compensation to persons who are not employees, consultants or advisors through registration on Form S-1 or, when eligible, Form S-3.[1] Private companies currently have no effective means to offer equity compensation to marketplace participants and therefore suffer a significant competitive disadvantage. Rule 701 was originally adopted because the Commission recognized that requiring registration of securities offered for compensatory purposes would impose too great a burden on private companies. Indigo believes that this logic holds true for compensatory grants to marketplace participants; requiring private companies like Indigo to register compensatory offerings would impose burdens that significantly outweigh the benefits of registration to participants. By expanding Rule 701 to include marketplace participants, the

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[1] As a private company, Indigo is presently concerned with the availability of Rule 701. Indigo believes that its arguments for the expansion of Rule 701 to include marketplace participants apply with equal force to Form S-8, and Indigo would recommend that the Commission make comparable revisions to the eligibility requirements under Form S-8.

Commission would enhance competition for the providers of goods and services and facilitate private companies' ability to increase workers' compensation through grants of equity.

In light of the foregoing, Indigo would encourage the Commission to broaden Rule 701 to enable companies like Indigo that provide a marketplace, platform or network to offer equity compensation to providers who participate in that marketplace, platform or network.[2]

Without an expansion of Rule 701, Indigo has no reasonable means to offer equity compensation to its growers. Regulatory alternatives other than Rule 701 are inadequate for a variety of reasons: Regulation A imposes disclosure requirements much closer to those of a registration statement than to the disclosure requirements of Rule 701; Rule 506(b) has a low numerical limit on participation (35) that is incompatible with Indigo's contemplated equity compensation program for growers; Rule 506(c) is limited to verified accredited investors, which would likely disqualify many or most potential participants; Rule 504 imposes a dollar limit likely to be insufficient and would require separate compliance with state blue sky laws, which may not be possible; and Regulation Crowdfunding imposes a very low dollar limit and uses offering mechanics incompatible with an ongoing compensatory program. Indigo strongly believes that private companies should have an efficient and effective means to issue equity in compensatory transactions while remaining private.

Indigo would recommend that, in making any revisions to Rule 701, the Commission consider whether state securities laws would conflict with expanded eligibility and might effectively deprive issuers of the benefits of the revised rule. Many state securities laws provide exemptions for offers and sales of securities under a compensatory benefit plan or compensation contract but limit those exemptions to employees, directors, officers, partners, trustees, consultants and advisors. The Commission should consider whether it can, and should, use its authority to pre-empt state laws that are inconsistent with any expansion of Rule 701.

Rule 701(c) Eligible Participants – Responses to Specific Requests for Comment

Indigo wishes to respond to certain specific requests for comment. For ease of reference, the Commission's specific questions are repeated in italics below.

1. *To what extent should definitions of "employee" under other regulatory regimes guide our thinking on eligible participants in compensatory securities offerings? Which regulatory regimes should we consider for this purpose? Should any new test apply equally to all companies, or would there be a reason to apply different tests based on the nature of the working relationship?*

[2] While Indigo expects that most marketplaces, platforms or networks will be online, Indigo believes that the rule should leave room for future innovations that may not necessarily require an online medium.

2. *Would the application of Rule 701 to consultants and advisors in any circumstances cover the alternative work arrangements described above?*

As explained above, Indigo believes that traditional definitions of employee, consultant and advisor are too narrow to address innovations in the gig or marketplace economy. Indigo would encourage the Commission to expand, rather than redefine, the pool of participants eligible to receive equity compensation under Rule 701. Indigo recommends that the pool include providers of goods and services through a marketplace, platform or network offered by the issuer.

3. *What, if any, services should an individual participating in the "gig economy" need to provide to the issuer to be eligible under Rule 701? Do these individuals in fact provide services to the issuer, or instead to the issuer's customers or end users? Should this fact make any difference for purposes of Rule 701 eligibility?*

Indigo believes that providers of both goods and services should be eligible participants under Rule 701. Market forces are likely to determine whether goods and services will be provided to the issuer or to the issuer's customers; Indigo suspects that both structures will find success in one or more industries. Accordingly, Indigo believes that the rule should not limit eligible participants only to persons who provide services to the issuer, but rather should include persons who generate or provide the supply of goods for the platform, as an inability to supply an adequate amount of goods for end-consumers could hamper the issuer's ability to expand and grow its products and service offerings.

Given the breadth of goods and services that could be bought and sold through online marketplaces, platforms or networks, Rule 701 should not be limited to particular kinds of services, such as those traditionally performed by employees or offered by consultants or advisors. Many types of services may be offered by independent contractors that would not ordinarily be characterized as "consulting" or "advisory" services, such as services involving manual labor. Rather than focusing on the particular types of goods or services to be provided by a recipient of equity compensation under the rule, the rule should focus on the compensatory nature of the relationship between the issuer and the recipient.

4. *Should we consider a test that identifies Rule 701 eligible participants as individuals who use the issuer's platform to secure work providing lawful services to end users?*

Indigo believes that Rule 701 should include, but not be limited to, "individuals who use the issuer's platform to secure work providing lawful services to end users." The rule should also include persons who provide services to the issuer and persons who sell goods to either the issuer or end users.

More broadly, Indigo believes that the Commission should relax the outdated requirement that eligible recipients of equity compensation be natural persons. This requirement unreasonably limits the usefulness of the rule, particularly as applied to industries such as agriculture. Although some growers within Indigo's network are organized as sole proprietorships, most are small farms that take advantage of ordinary and widely used legal structures – such as corporations, limited liability companies and limited partnerships – that offer families and other small businesses a variety of legal benefits, such as potential tax advantages, estate planning advantages and inter-generational retention of farmland. Indigo believes that the categorical exclusion of all growers not organized as sole proprietorships would draw a meaningless distinction between growers who are otherwise similarly situated with respect to their ability to participate in the development and growth of the Indigo Marketplace, Indigo Transport or other Indigo products and services. The Commission's current accommodation for wholly owned corporate alter egos[3] is too narrow and should be expanded to facilitate grants to a broader range of legal entities.

Excluding legal entities from eligibility under Rule 701 would force some growers to choose between, on the one hand, remaining eligible to receive equity compensation (by remaining a sole proprietorship) and, on the other hand, forgoing eligibility in order to retain the benefits of forming a legal entity. Instead of focusing on whether or not the recipient of an equity grant is a natural person, Indigo believes that the rule should focus on the compensatory nature of the grant. By requiring that any grant be compensatory in nature, Rule 701 would provide an adequate safeguard against misuse of the rule for capital-raising purposes. If the Commission were to retain the rule's requirement that recipients must be natural persons, that requirement would exclude a substantial portion of Indigo's grower network from eligibility to participate in its desired equity compensation program and thereby inhibit the growth of the Indigo Marketplace, Indigo Transport and other Indigo products and services. The removal of the natural-person requirement would create meaningful opportunities to expand economic participation and opportunity in the agricultural industry, which is made up in large part of family-owned farms[4], many of which operate through legal entities.

Indigo appreciates that the Commission adopted the natural person requirement in an effort to prevent abuse but believes that the requirement is overbroad and unreasonably limits the usefulness of the rule. Indigo would encourage the Commission to consider other anti-abuse measures that may be equally effective. When the Commission codified the natural person requirement, the Commission made note of historical abuse of Form S-8 by consultants and advisors, principally those who facilitated capital-raising transactions by issuers by making market sales and funneling proceeds back to the issuer. Indigo notes that various forms of equity compensation, such as grants of restricted stock, restricted stock units, stock appreciation rights, unrestricted stock awards, performance-share awards and dividend equivalent rights, generally do not result in the payment of any cash to the issuer and therefore do not carry the same risk of abuse as awards requiring the payment of cash to the issuer. Even stock options, when exercised on a net basis rather than for cash, do not carry the same risk. Revising Rule 701 to permit compensatory grants that do not result in the payment of cash to the issuer would be one potential avenue to expand the benefits of the rule to a wider group while simultaneously limiting the risk of abuse. If the Commission were to determine that such restrictions were still insufficient, the Commission

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[3] Concept Release, text accompanying footnote 34.

[4] According to the United States Department of Agriculture, approximately 97% of U.S. farms are family-owned.

could consider other requirements, such as minimum vesting conditions, fair market value exercise price requirements, holding periods or caps on individual awards, that would further inhibit abuse of the rule by participants organized as legal entities.

4.a. *Are any other factors necessary to establish any level of control by the issuer, such as requiring the work to be assigned by the issuer? Or is it necessary that the issuer control what the individual charges end users for services, such as by setting hourly rates or ride fares? Should a written contractual relationship between the issuer and individual be necessary? Why or why not?*

Indigo does not believe that Rule 701 should require any control by the issuer over the providers of goods and services or any written contractual relationship (other than perhaps the very basic contractual relationships formed by participating in the marketplace, platform or network, which are presumably so commonplace that requiring them would not appear to achieve any clear regulatory purpose).

First, requiring control by the issuer would likely immediately disqualify many providers of goods and services who participate in marketplaces, platforms or networks that match buyers and sellers through an automated process or through a process where buyers select their counterparties. Similarly, requiring the issuer to control prices would disqualify participants in marketplaces, platforms and systems (such as the Indigo Marketplace) that allow market forces to set prices or otherwise match willing buyers and sellers based on criteria they select (such as delivery dates, warranties or other terms).

More importantly, however, extensive control by the issuer will often be incompatible with the success of the new economy marketplaces. The contractual relationships proliferating in the new economy typically lack extensive control by the "employing" company over whether, when, how often and on what terms the "employed" person will provide goods or services through the employing company's platform. Rather, the worker often retains significant flexibility to decide these matters. Providers can participate only when attractive opportunities arise or on a more regular or continuous basis, sometimes in lieu of other full-time employment. This absence of control and corresponding workplace flexibility have likely contributed to the dramatic growth of this segment of the labor market. Indigo believes that Rule 701 should not be structured to promote or require "controlling" relationships but instead should facilitate compensatory transactions regardless of the particular types of relationships that may ultimately succeed in the marketplace economy. Indigo would encourage the Commission to revise Rule 701 to encourage, rather than inhibit, the continued development of new types of contractual relationships by refraining from imposing any requirement that issuers exercise any significant amount of control over the work or participation of the providers of goods and services.

4.b. *Does it matter whether the individual goes through a vetting or screening process by the issuer to use the platform?*

Indigo does not believe a vetting or screening process would be a helpful requirement. Presumably each issuer will establish qualification criteria based on industry norms and consumer demands that are suitable for its customers, which may vary significantly across industries. Indigo, for example, has criteria for participants in its Indigo Transport program, which include insurance, licensing and safety rating checks. An issuer (such as Etsy) that offers a marketplace for handcrafted items would likely have very different screening criteria from an issuer (such as care.com) that offers babysitting, senior care and other care services.

4.c. Does it matter whether the issuer controls when and how the individual receives monetary compensation for the services provided?

As noted above, Indigo believes that Rule 701 should not seek to promote or require control by the issuer over providers of goods and services but should instead allow market forces to determine the relationships among the issuer and the buyers and sellers who participate in its marketplace, platform or network. A requirement of control could needlessly disqualify providers who participate in marketplaces, platforms or networks that give buyers and sellers the flexibility to establish individually negotiated contractual terms and conditions.

5. Would it be sufficient for an individual to use the issuer's platform to sell goods, to earn money from leasing real estate or personal property, or to conduct a business activity? Would the individual be considered to be providing a service to either or both the company and its end-users or customers? Does it matter whether that business activity provides a service typically provided by an employee or is of a more entrepreneurial nature? How do the answers to these questions affect whether there is a sufficient nexus between the individual and the issuer to justify application of the exemption for compensatory transactions?

Indigo believes that it should be sufficient for a provider of goods or services to qualify for the issuer's marketplace, platform or network to be eligible to receive equity compensation from that issuer. As explained above, Rule 701 should not limit eligibility to persons who provide goods or services only to the issuer or only to its customers; either should be sufficient, and neither seems analytically relevant to whether or not the issuance of equity by the issuer is compensatory in nature. Issuers like Indigo want to compensate marketplace participants <u>for their participation</u> in the marketplace, and issuers will presumably award compensation in amounts appropriate for the degree of participation.

Indigo believes that a provider's qualification for use of the issuer's marketplace, platform or network to sell goods or services should provide a sufficient nexus to merit application of the exemption from registration. The critical nexus is provided by the compensatory nature of the transaction, where the issuer rewards the participant for joining and helping its marketplace, platform or network to reach and maintain the critical mass to succeed and thrive. Indigo expects that it and other issuers will rationally reserve the substantial part of equity awards under Rule 701 for persons who contribute meaningfully to the growth and development of their networks, but Indigo believes that extensive or substantial contributions should not be a gating criteria to receive an award.[5] Indigo would benefit, for example, from the flexibility to grant awards to new marketplace participants who at the time of grant may not have made any sales through the Indigo Marketplace. Indigo would expect that vesting of the award may be tied not only to the lapse of time but also to achievement of specified participation targets or similar criteria, which would give the provider an incentive to continue to participate in the Indigo Marketplace and help it to grow. Accordingly, Indigo believes that the Commission should not impose any new requirement that a participant deliver any particular minimum amount of goods or services in order to be eligible to receive awards under the rule.

Under the existing rule, part-time employees and temporary consultants are eligible to receive compensatory equity awards, regardless of the amount of services previously or subsequently provided to the issuer. Indigo believes that this flexibility should be preserved for any newly eligible participants under a revised Rule 701. Implicit in the existing rule is a presumption that the mere formation of an employment, consulting or advisory relationship with the issuer is a sufficient nexus to forego the benefits of registration. Indigo believes that, for purposes of deciding whether to relieve issuers of the burdens of registration when granting equity compensation, the formation of a relationship between the issuer and a participant in its marketplace, platform or network is comparable to the formation of an employment, consulting or advisory relationship (particularly the latter two). Participants deciding whether to form a relationship with a company operating a marketplace, platform or network are in much the same position, and have access to much the same business and financial information about the issuer, as individuals deciding whether to accept a new employment or consulting position. Accordingly, Indigo believes that any revision to Rule 701 should retain for any newly eligible participants the existing flexibility to grant awards regardless of the amount of goods or services provided.

6. *Should it make a difference whether the end user pays the issuer for the goods or leased property, and the issuer then provides a monetary payment to the individual, or the end user pays the individual directly, who then pays a fee to the issuer?*

Indigo believes that eligibility to receive equity compensation under the Rule should not be contingent upon the types of payment structures adopted by issuers. What is relevant is the participation by the provider of goods or services in the issuer's marketplace, platform or network, not the mechanism of payment. The mechanics of payment in different markets are likely to vary depending on the needs and capabilities of buyers and sellers, including which party will bear the risk of non-payment and the means of recourse available to the parties.

7. *For example, should it matter what percentage of the individual's earned income is derived from using the issuer's platform? If so, should this be based on earned income during the last year, a series of consecutive years, or current expectations? Should there be a minimum*

[5] Indigo notes that employees, consultants and advisors are eligible to receive equity compensation awards under Rule 701 immediately upon assuming the position. Indeed, employees, consultants and advisors often negotiate to receive equity compensation awards before accepting the position and do so without the benefit of any information about the issuer that they might later obtain from serving in that position.

percentage? How should this be verified? How should such a test be applied where the individual provides services to multiple companies? How would the issuer be able to determine how much of an individual's income is derived from using the issuer's platform?

Indigo strongly opposes any eligibility requirement under Rule 701 based on an individual's earned income for several reasons. First, an earned income requirement is inconsistent with existing Rule 701, which imposes no such requirement on employees, consultants, advisors or other eligible persons, any of whom may work part-time or on a temporary basis. A more onerous requirement for other participants would not seem justified without meaningful evidence of abuse of the rule by currently eligible participants who provide only limited services to the issuer. Second, depending on the threshold selected, an earned income requirement would likely disqualify otherwise eligible providers from receiving equity compensation from more than one or a few issuers, an outcome which Rule 701 should not promote. Third, many providers may be reluctant to provide highly sensitive personal information like earned income, which unscrupulous companies might use to negotiate better terms with providers and which would be exposed to an increased risk of cybertheft. Lastly, an earned income requirement would significantly increase administrative costs, burdens and complexity by requiring issuers to collect and verify participants' income on an ongoing basis (presumably at least annually). This letter elaborates on several of these points below.

In the new economy, providers can often determine whether they wish to concentrate the sale of their goods or services with one marketplace, platform or network or to establish relationships with multiple organizations. Indigo does not see any inherent value in requiring providers to associate themselves with a single issuer; such a requirement would inhibit competition and limit providers' flexibility to switch to another marketplace, platform or network when doing so would be advantageous. An earned income requirement would bias providers to remain with the incumbent. Indigo believes that Rule 701 should be flexible enough to ensure that providers who work with multiple marketplaces, platforms or networks would not be structurally ineligible to receive equity compensation awards from more than one of them.

As the Concept Release notes,[6] a non-employee who provides services traditionally performed by an employee is eligible to receive equity compensation under Rule 701, but only when compensation received from the issuer is the non-employee's "primary source" of earned income. Indigo believes that the Commission should avoid such a requirement for at least three reasons.

First, a "primary source of earned income" requirement would inhibit the growth of new economy companies by restricting equity grants to only those providers who work primarily for the issuer, thereby excluding providers with whom the issuer may have a substantial relationship but who work hard enough to have established a more substantial relationship with another

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[6] Concept Release, text accompanying footnote 35.

company. Implicit in a "primary source" requirement is a presupposition that the provider cannot have a sufficient relationship, or nexus, with more than one company, which is not self-evident.

Second, a "primary source" requirement is inconsistent with the current eligibility of part-time and temporary employees, consultants and advisors to receive grants from any number of companies. For purposes of eligibility, Rule 701 does not distinguish between long-tenured, full-time employees and newly hired, part-time employees; both are eligible to receive awards under the rule. Accordingly, the rule already permits companies to make awards to individuals with only a brief and limited relationship with them, so long as they satisfy the traditional definition of employee, consultant or advisor. A "primary source" requirement is inconsistent with this flexibility, and the Commission should provide similar flexibility to marketplace participants.

Third, any "earned income" requirement would require issuers to request information about a provider's other sources of income, which is often deeply sensitive and subject to valid concerns about personal privacy. Indigo would not support a rule that would require advance (and ongoing) disclosure of sensitive personal information from prospective grantees, particularly those with whom issuers are trying to establish new relationships. Such a requirement would inhibit the use of equity compensation because many participants will be reluctant to share income or other personal financial data with issuers, especially when the initial equity grant is likely to be modest. Providers who work with multiple companies would typically regard information about their income from other companies as highly confidential and competitive information, and the Commission should not put those providers in a position where they would have to elect between disclosing that information and receiving equity grants. Moreover, such a requirement would require issuers to establish and maintain administrative procedures to obtain and verify income information on a regular basis, and it is not clear that the benefits of this restriction would outweigh these costs.

8. *Alternatively, where the individual provides services, should eligibility be based on information objectively verifiable by the issuer, such as amount of income earned, or percentage of time or number of hours worked?*

As noted above, Indigo believes that it should be sufficient for a provider of goods or services to qualify to participate in an issuer's marketplace, platform or network without meeting any minimum threshold of participation.

If the Commission were to conclude that some minimum amount of goods or services were necessary to establish a sufficient nexus between an issuer and an eligible participant, Indigo would recommend that the Commission select criteria based on information readily available to the issuer from its own financial records, such as the dollar value of transactions by the participant through the issuer's marketplace, platform or network.

Indigo also believes that the threshold amount of any such criteria should be expressed as a readily determinable, objective amount, such as a specific dollar threshold set forth in the rule or published by the Commission on a regular basis. The amount could be based, for example, on a specified percentage of US household median income. Given that current Rule 701 imposes no such minimum threshold, Indigo believes that any threshold should be low enough to avoid unduly restricting the usefulness of the rule (e.g., $1,000).

10. *Should the test focus on the extent to which the individual uses the issuer's platform to obtain business on a regular basis? Should it consider the duration of time over which the individual has so used the issuer's platform?*

Please see the responses to Questions 5, 7 and 8.

16. *Should additional disclosures be provided? If so, what and when?*

Indigo believes that the existing disclosure requirements of Rule 701 represent a careful balance between minimizing regulatory burdens and ensuring the provision of sufficient information to recipients of equity compensation. The disclosures required to be provided to employees, consultants and advisors are sufficient for a broader pool of providers of goods and services.

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Indigo appreciates the Commission's willingness to solicit public comment on Rule 701 and is pleased to have had the opportunity to share its thoughts. Indigo would be pleased to discuss this letter with the Commission. Any questions about this letter should be directed to Paul T. Dacier, Executive Vice President and General Counsel, at [redacted].

Very truly yours,

Paul T. Dacier
Executive Vice President and General Counsel