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DODD-FRANK REFORM LEGISLATION DIRECTS THE SEC TO INCREASE RULE 701 ADDITIONAL DISCLOSURE THRESHOLD FROM \$5 MILLION TO \$10 MILLION

On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Act"). The Act directs the Securities and Exchange Commission (the "SEC") to raise the threshold from \$5 million to \$10 million for enhanced disclosure under Rule 701 ("Rule 701") of the Securities Act of 1933, as amended (the "Securities Act"), which is commonly relied upon by private companies and non-reporting foreign companies that issue securities under compensatory benefit plans. The SEC must also amend Rule 701 to index the aggregate sales price threshold for inflation every five years.

The Act directs the SEC to adopt amendments to Rule 701 to effectuate these changes no later than July 23, 2018. Until the SEC adopts final rules to effectuate these changes, the aggregate sales price threshold will remain at \$5 million.

Background

Rule 701 provides an exemption from registration for companies not subject to the reporting requirements of the Exchange Act of 1934, as amended. Pursuant to Rule 701, a company may grant equity awards to employees, directors and consultants under written compensatory benefit plans provided the aggregate sales price or amount of securities sold under Rule 701 during any consecutive 12-month period does not exceed the greatest of: (i) 15% of its total assets, measured at its most recent balance sheet date; (ii) 15% of the outstanding class of stock subject to the awards, measured at its most recent balance sheet date; or (iii) \$1 million.

If the aggregate sales price or amount of securities sold during any consecutive 12-month period exceeds the enhanced disclosure threshold, then the company must deliver additional information to participants. The additional disclosure required by an issuer that exceeds the threshold is: (i) a summary of the material terms of the plan; (ii) the risk disclosures associated with investment in the securities offered pursuant to the plan; and (iii) certain financial information of the company.

Additional Information

If you would like more information regarding Rule 701 and how it may apply to your company, please contact the authors or a member of Harter Secrest & Emery LLP's Securities and Capital Markets Group or Executive Compensation Group. For more information, visit www.hselaw.com.

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