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SECURITIES AND EXECUTIVE COMPENSATION

SEC INCREASES RULE 701 ADDITIONAL DISCLOSURE THRESHOLD FROM \$5 MILLION TO \$10 MILLION AND ISSUES CONCEPT RELEASE ON RULE 701

On July 18, 2018, the Securities and Exchange Commission (the “SEC”) adopted final rules that 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, which is commonly relied upon by private companies and non-reporting foreign companies that issue securities under compensatory benefit plans. The rule change was required by the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Act”) signed into law on May 24, 2018. Pursuant to the Act, the SEC will index the threshold amount for inflation every five years. For more information on the changes to Rule 701 required by the Act, see our [previous LEGALcurrents](#).

The increased threshold is effective immediately upon publication in the Federal Register. Companies that have commenced an offering in the current 12-month period can apply the new \$10 million additional disclosure threshold once the amendment is effective.

The SEC also issued a Concept Release seeking public comment on ways to modernize compensatory securities offerings and sales. The SEC is soliciting comment on:

- relationships in the “gig economy” between companies and workers who may not be treated as employees eligible for exempt compensatory offerings under Rule 701, and what attributes of these relationships may provide a basis for extending eligibility under Rule 701 to such workers; and
- whether the requirements under Rule 701 to provide a summary of the material terms of the plan, risk disclosures associated with investment in the securities offered pursuant to the plan and certain financial information of the company, and when the company must provide such information to employees, should be further revised.

In addition, the Concept Release requests comments on whether Form S-8, which provides a simplified registration form for companies to register an offering of securities under a compensatory benefit plan, should be further streamlined.

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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