LEGAL Q&A

Q **Can my privately held company issue stock or other securities to its employees as an incentive without registering the stock or other securities under the federal securities laws and without undermining the ability of the company to raise capital in the future through equity financings?**

A Yes. Rule 701 of the Securities Act of 1933 allows private companies to offer or sell securities to their employees under a safe harbor exemption from the registration requirements of the federal securities laws. The issuer must meet certain requirements in order for the safe harbor to be available. Securities must be offered under a written compensatory benefit plan or written compensation contract delivered to recipients (i.e., employees, directors, officers or certain consultants and advisors). The primary purpose of the issuance must be compensatory in nature and not for raising capital.

The aggregate sales price for securities offered under Rule 701 (e.g., the exercise price on the date of grant for options) in any consecutive 12-month period cannot exceed certain thresholds. If the aggregate sales price during any 12-month period exceeds $5 million, the issuer must deliver additional information to recipients, including a summary plan description, risk factor analysis and financial statements.

MORE

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