Question 271.10

Question: Within 12 months of an original option grant, the issuer reprices the option grant at a lower exercise price, which, in turn, lowers the aggregate sales price or amount of securities sold during the 12-month period. May the issuer exclude the original grant in determining the amount of securities that may be sold and whether it has an obligation under Rule 701 to deliver the additional disclosure called for when its issuance level exceeds $~~5~~10 million?

Answer: Yes, but the issuer must count the repriced options as a new sale, and include them in determining its aggregate sales price or amount of securities sold within any consecutive 12-month period that includes the repricing date. [~~Jan. 26~~March 6, ~~2009~~2026]