Question 271.24

Question: An issuer is relying on Rule 701 to exempt the offer and sale of a restricted stock unit (RSU) award it is making to one of its employees. The RSU award will settle upon the satisfaction of conditions based on length of service and/or company performance. No additional consideration is paid by the employee at the time of settlement. If the issuer sells an aggregate amount of securities (including the RSUs) during the consecutive 12-month period that exceeds $~~5~~10 million, thus triggering the requirement to deliver the additional information specified in paragraphs (1) through (4) of Rule 701(e), when is the issuer required to provide the additional information?

Answer: Under Rule 701(e), the issuer must deliver the information specified in paragraphs (1) through (4) to investors "a reasonable period of time before the date of the sale." For the sale of an RSU award that relies on Rule 701 for exemption, the date of sale is the date it is granted. As such, the issuer must provide the required information a reasonable time before the date the RSU award is granted. Although RSUs are derivative securities (as their value is derived from value of the underlying common stock), they are not "exercised or converted," and thus Rule 701(e)(6) relating to the exercise or conversion of derivative securities does not apply. [~~October 19~~March 6, ~~2016~~2026]