



## Startup America Suggestion of the Day (Installment 4)

By [Joe Wallin](#)

– February 10, 2011

My suggestion of the day for the Startup America Initiative Team: remove the mathematical limitations in Rule 701.

If you are not familiar, Rule 701 is the federal securities law exemption which allows startup companies to issue stock options and other equity incentive awards to employees and independent contractors. It is a key piece of law in startup land. Without it, the lives of startups would be much more difficult and complex than they already are.

However, Rule 701 is not perfect. There are mathematical limitations built into Rule 701 that complicate the lives of startups. One set of those mathematical limitations is absolute, meaning that there is a cap on the amount of securities a startup can sell under Rule 701. There is also an amount of securities sold under Rule 701 limitation that triggers additional disclosure obligations.

These rules create problems for companies. They are a trap. You might recall that one of Silicon Valley's greatest success stories had to delay its IPO because it ran over Rule 701's limitations.

My suggestion for the Startup America team: Remove the mathematical limitations in Rule 701. This will make life easier for startups. If you would like to see how I would redline Rule 701 to make this happen, see here: [rule 701 redline](#).

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.