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(UPDATE) SUBCHAPTER V: A Powerful Tool for Early-Stage, Venture Capital Backed Companies in a Crisis

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On only March 24, 2020, we released an advisory discussing the newly available Subchapter V of Chapter 11 and how it can facilitate in- and out-of-court restructurings for companies under the approximately $2.7 million threshold currently in effect without requiring a change of ownership.

Yesterday, March 25, 2020, the Senate passed the “Coronavirus Aid, Relief, and Economic Security Act,” or the “CARES Act,” which among other things includes an increased threshold for Subchapter V availability, raising the threshold from approximately $2.7 million to $7.5 million for the one-year period following the date the law goes into effect. We also understand that the current version of the CARES Act in the House includes the same amendment.

As a result, the availability of Subchapter V of Chapter 11 may soon increase significantly, allowing the equityholders of substantially larger companies to also benefit from Subchapter V. Importantly, even companies with liabilities in excess of the new potential $7.5 million threshold may be able to take advantage of Subchapter V by using two-step processes where liabilities are reduced below the threshold immediately prior to commencing Chapter 11 cases (e.g., by using insider capital to reduce non-insider liabilities).

We will continue to update you as further developments warrant, but if you have any questions or would like to discuss Subchapter V of Chapter 11 or the proposed changes to the eligibility threshold, please do not hesitate to contact Andrew Ritter with Wiggin and Dana at 212-551-2862 or aritter@wiggin.com.

Visit Wiggin and Dana’s COVID-19 Resource Center here for additional publications and helpful links on multi-disciplinary topics that are relevant during the current COVID-19 global pandemic.