

SEC Adopts Revisions To Rules 144 & 145

In December 2007, the SEC published Final Rules containing significant changes to Rules 144 and 145. The revisions, which the SEC designed to increase capital-raising opportunities for small businesses, will actually make it easier for businesses of all sizes to raise capital and comply with certain reporting procedures. The amendments will go into effect on February 15, 2008.

RULE 144 AMENDMENTS

Under Rule 144, securities issued in private transactions or held by affiliates may be sold in the public markets without the seller being deemed an “underwriter” and thereby potentially running afoul of the registration requirements of the Securities Act of 1933.

Holding Periods for Restricted Securities

The holding period set forth in Rule 144(d) has been reduced to six months where the issuer has been a “reporting company” under the Securities and Exchange Act of 1934 (the “Exchange Act”) for 90 days prior to the sale of the restricted securities. However, the holding period will continue to be one year for securities of non-reporting issuers.

Non-Affiliates

Following the six-month holding period for securities of reporting companies, resellers of restricted securities which have not been an affiliate of the issuer for three months prior to the sale of such securities (“non-affiliates”) will not be subject to any Rule 144 requirements except for the public information requirement under Rule 144(c), which will still be applicable for six months after such holding period. Thereafter, non-affiliates may resell securities of reporting companies free of any Rule 144 requirements. Similarly, after the one-year holding period for securities of non-reporting companies, non-affiliates may resell such securities free of any Rule 144 requirements.

Manner of Sale

Prior to these amendments, Rule 144(f)-restricted securities were required to be sold in a “broker transaction” or directly with “market makers” as defined in the Exchange Act. Rule 144(f) has been amended to permit the resale of equity securities of affiliates through riskless principal transactions. In addition, Rule 144(g) has been amended to permit brokers to post bids and seek quotations in alternative trading systems without violating the prohibitions against broker solicitations with respect to the resale of equity securities of affiliates. Finally, and perhaps more significantly, the manner-of-sale requirements under Rule 144(f) regarding sales of debt securities by affiliates have been eliminated.

Volume Limitation on Debt Securities

The volume limitations set forth in Rule 144(e) have been amended to create an alternate volume test exclusive to affiliate resales of debt securities. Under this new volume test, up to 10% of a particular tranche (or class when the securities are non-participatory preferred stock) may be resold in a three-month period.

Form 144 Filing Requirement

The filing thresholds set forth in Rule 144(h) have been increased to require filing of Form 144 only for intended sales exceeding 5,000 shares or \$50,000 in aggregate sale price in a three-month period. Notably, this requirement applies only to issuer affiliates.

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The following table summarizes the significant amendments to Rule 144:

	Affiliate or Person Selling on Behalf of an Affiliate	Non-Affiliate (and Has Not Been an Affiliate During the Prior Three Months)
Restricted Securities of Reporting Issuers	<u>During six-month holding period</u> No resales under Rule 144 permitted. <u>After six-month holding period</u> May resell in accordance with all Rule 144 requirements, including: <ul style="list-style-type: none"> • Current public information • Volume limitations • Manner-of-sale requirements for equity securities • Filing of Form 144 	<u>During six-month holding period</u> No resales under Rule 144 permitted. <u>After six-month holding period but before one year</u> Unlimited public resales under Rule 144 except that the current public information requirement still applies. <u>After one-year holding period</u> Unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.
Restricted Securities of Non- Reporting Issuers	<u>During one-year holding period</u> No resales under Rule 144 permitted. <u>After one-year holding period</u> May resell in accordance with all Rule 144 requirements, including: <ul style="list-style-type: none"> • Current public information • Volume limitations • Manner-of-sale requirements for equity securities • Filing of Form 144 	<u>During one-year holding period</u> No resales under Rule 144 permitted. <u>After one-year holding period</u> Unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements.

RULE 145 AMENDMENTS

Presumptive Underwriter

Rule 145 has been amended to eliminate the presumptive underwriter provisions except in the case of transactions involving Shell Companies. When Shell Companies are involved with a 145(a) transaction (other than business combination related Shell Companies), any party and such party's affiliates, will be deemed an underwriter and must comply with the resale restrictions set forth in Rule 145(d). The 145(d) resale restrictions have been revised to harmonize such restrictions with relevant amendments to Rule 144.

CONFORMING AMENDMENTS

Rule 903(b)(3)(iii) of Regulation S, Rule 190 and Rule 701 have been amended to conform to the new Rule 144 amendments.

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