

Securities Lawyer 101



Rule 144 Q & A

Guidelines for Removing Restricted Legends from Shares

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Rule 144 Q & A

The Securities Act of 1933, as amended (the "Securities Act") requires the sale of a security to be registered under the Securities Act, unless the security or transaction qualifies for an exemption from registration. [Rule 144](#) of the Securities Act provides a safe harbor that permits holders of "restricted securities" to resell their securities in the public market if specific conditions are met.

This Securities Lawyer 101 Series discusses the most common questions we receive about Rule 144's Safe Harbor.

Q. What is Section 5 of the Securities Act of 1933 (the "Securities Act")?

A. Section 5 of the Securities Act requires that all offers and sales of securities be registered with the Securities and Exchange Commission (the "SEC") or exempt from the registration requirements.

Q. What is the "safe harbor" provided by Rule 144?

A. Rule 144 provides a safe harbor from the registration requirements of Section 5 of the Securities Act to certain holders of securities, if certain requirements are met. The requirements of Rule 144 vary depending upon whether the holder of the shares is an affiliate or non-affiliate of the issuer.

Q. What are the requirements for non-affiliates of the issuer to rely upon the "safe harbor" under Rule 144, for their resales?

A. The conditions of the Rule 144 safe harbor are: (i) adequate current public information with respect to the issuer, (ii) a holding period for restricted securities, and (iii), in the case of affiliates' sales, certain volume limitations and manner of sale requirements. In addition, there may be a notice requirement if the amount of securities sold, exceeds certain amounts.

Q. How does a shareholder comply with Rule 144's adequate current public information requirement?

A. For purposes of Rule 144, the informational requirements depend upon whether the issuer is an SEC reporting issuer. A reporting issuer is a company with securities registered under the Securities Act and/or the Securities Exchange Act of 1934 (the "Exchange Act").

For shareholders of a reporting company to comply with the informational requirements of Rule 144, the company must have been subject to the SEC's reporting requirements for at least 90 days prior to the proposed sale date and have filed all reports required by the Exchange Act during the preceding 12 months or for such shorter time period that the issuer was required to file reports.

For a non-reporting issuer to comply with the reporting requirements of Rule 144, it must provide the information required by Rule 15c2-11 of the Exchange Act.

Q. What is the holding period required by Rule 144?

A. Shareholders seeking to sell restricted securities of an SEC reporting issuer who has complied with the requirements above,

must hold their shares for six months. Shareholders seeking to sell securities of non-reporting companies must hold their shares for twelve months.

Q. When does the holding period of Rule 144 start?

A. Generally, the holding period starts on the date that consideration was paid, for the securities.

Q. When does the holding period begin under Rule 144 or a cashless exercise of options or warrants?

A. If the options or warrants were acquired from the issuer and have a cashless exercise, the underlying security shall be deemed to have been acquired at the same time as the options or warrants.

Q. What is tacking for the purposes of Rule 144?

A. Rule 144 allows the holding periods of holders to be added to that of prior non-affiliate holders.

Q. When does the holding period start for securities purchased by a promissory note or other similar obligation?

A. A promissory note or similar obligation to pay the purchase price, or entering into an installment purchase agreement with a seller, is deemed full payment only if the promissory note, obligation or contract (1) provides the seller full recourse against the purchaser of the securities, (2) is secured by collateral, other than the purchased securities, with a fair market value at least equal to the purchase price of the purchased securities, and (3) shall have been discharged by payment in full prior to the sale of the securities.

Q. When does the holding period start for securities acquired through a dividend or stock split?

A. Securities that were acquired from an issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as (i) the securities upon which the dividend was paid, (ii) the securities subject to the split, or (iii) the securities surrendered in the recapitalization.

Q. When does the holding period start for securities acquired from the issuer in a conversion?

A. If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.

Q. What are the informational requirements of Rule 15c2-11 that apply to shareholders of non-reporting companies relying upon Rule 144?

A. Rule 144 requires that the company have current public information available. For a non-reporting company this means the issuer must have the information required by [Rule 15c-211](#) available. Rule 15c-211 requires that the broker or dealer have extensive specified information about the issuer in its records and make such information reasonably available to potential investors. Rule 15c-211 requires the following information be disclosed:

- The exact name of the issuer and any predecessor;
- The address of the issuer's principal executive offices;

- The state of the issuer's incorporation;
- The exact title and class of the security;
- The par or stated value of the security;
- The number of shares outstanding as of the end of the issuer's most recent fiscal year;
- The name and address of the issuer's transfer agent;
- The nature of the issuer's business;
- The nature of the issuer's products or services;
- The nature and extent of the issuer's facilities;
- The names of the chief executive officer and members of the board of directors;
- The issuer's most recent balance sheet and profit and loss and retained earnings statements;
- Similar financial information for that part of the two preceding fiscal years as the issuer or its predecessor, if any, has been in existence;
- Whether the broker or dealer or any associated person is affiliated, directly or indirectly, with the issuer; and
- Whether the quotation is being submitted or published directly or indirectly on behalf of the issuer or any director, officer or other person, who is directly or indirectly the beneficial owner of more than 10% of the outstanding equity securities of the issuer, and, if so, the identity of such person, and the basis for any exemption under the federal securities laws for any sales of securities on behalf of that person.

For further information about [Rule 144](#), please contact [Brenda Hamilton](#), Securities Attorney at 101 Plaza Real South, Suite 202 North, Boca Raton, Florida, (561) 416-8956, or by email at info@securitieslawyer101.com. This securities law Q&A is provided as a general informational service to clients and friends of [Hamilton & Associates Law Group, P.A.](#) and should not be construed as, and does not constitute legal advice on any specific matter, nor does this create an attorney-client relationship. Please note that the prior results discussed herein do not guarantee similar results.
