



Client Alert

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SEC AMENDS RULE 144

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SEC Reduces Holding Period For Securities Issued By Reporting Companies To Six Months

The SEC has adopted significant changes to Rule 144 that will become effective within sixty days of publication in the Federal Register. These amendments are the most significant changes to Rule 144 in over a decade and serve to lessen the burden on individuals and companies wishing to access the private and public markets. In order to help you plan and anticipate future needs we wanted to take a moment to alert you of these changes before they take effect.

Overview

Rule 144 regulates the resale of two categories of securities – restricted securities and control securities. “Restricted securities” generally are those securities acquired directly or indirectly from the issuer in a transaction not involving a public offering, such as an acquisition pursuant to Regulation D. The term “control securities” is commonly used to refer to securities held by affiliates of the issuer, such as an officer or director of the issuing company, even those securities acquired pursuant to an effective registration statement, such as Form S-8. Rule 144 establishes certain guidelines that, if met, provide the seller of restricted or control securities with a safe harbor from the registration requirements of the Securities Act of 1933.

Set forth below is a brief summary of the significant changes made to the Rule 144 requirements:

- The holding period for restricted securities issued by reporting companies is shortened from one year to six months
- Non-affiliates of reporting companies can freely resell restricted securities after satisfying a six-month holding period (subject only to the public information requirement described below)
- Non-affiliates of non-reporting companies can freely resell restricted securities after satisfying a twelve-month holding period
- The manner of sale requirements for affiliate sales have been revised
- The Form 144 filing threshold for affiliates has been raised from 500 shares or \$10,000 to 5,000 shares or \$50,000
- The Form 144 filing requirement has been eliminated for non-affiliates

A merging of Form 144 and Form 4 was considered, but not adopted.



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Restricted Securities

The holding period for restricted securities of reporting companies has been shortened from one year to six months for non-affiliates, except that resales of restricted securities will be subject to the requirement that current public information on the issuing company be available between the end of the six-month holding period and one year after the acquisition date of the securities. This information requirement is met by compliance with either the reporting requirements of the Securities Exchange Act of 1934 or other comparable means established by Rule 144(c). In relation to shares of non-reporting companies, non-affiliates of the issuing company are now free to resell shares after satisfying a twelve-month holding period. After one year, non-affiliates of public and private companies need not comply with any other Rule 144 requirements.

Control Securities

In regard to the resale of securities by control persons of the issuing company, the SEC has shortened the holding period requirements for shares of reporting companies from one year to six months and for shares of non-reporting companies to one year, provided that the current public information requirement discussed above is met. The SEC has also revised the manner of sale requirements for equity securities, eliminated manner of sale requirements for debt securities and relaxed the volume restrictions for debt securities.

Form 144

The SEC changed the threshold levels that would trigger the need to file a Form 144 upon resale of securities. With respect to affiliates, the Form 144 threshold has been raised from 500 shares or \$10,000 to 5,000 shares or \$50,000. The Form 144 filing requirement has been eliminated for non-affiliates.

If we can be of any assistance to you in this or any other matter, please feel free to contact any member of the securities team at Arnall Golden Gregory LLP.

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