



The Financial Center
666 Walnut Street, Suite 2500
Des Moines, IA 50309
Telephone: (515) 288-2500

SEC Adopts Changes to Rule 144 Greater Liquidity For Restricted Securities and Securities Held by Affiliates February 19, 2008

Effective February 15, 2008, the SEC has revised Rule 144 relating to the resale of restricted securities. These amendments to Rule 144 should enhance liquidity for affiliate and non-affiliate holders of restricted securities. Generally, the holding period for restricted securities of companies that report to the SEC under the Securities Exchange Act of 1934 will be shortened to *six months*, after which securities held by non-affiliates will, in most cases, be freely saleable. Securities held by affiliates will be saleable subject to other requirements of Rule 144.

Non-affiliates of a reporting company: As of that date, a person who is not an affiliate (and has not been an affiliate for the preceding three months) of an issuer that has met reporting requirements for at least 90 days, may resell the securities after a six-month holding period. If the issuer has not filed all required reports for at least twelve months prior to the sale (or for a shorter period if the issuer has been subject to reporting requirements for less than twelve months), the holding period is extended to one year.

Non-affiliates of a non-reporting company: If the issuer is not subject to reporting requirements, a minimum of one year must elapse prior to resale of the securities.

Affiliates of a reporting company: If the issuer has met reporting requirements for at least 90 days and has filed all required reports for at least twelve months prior to the sale (or for a shorter period if the issuer has been subject to reporting requirements for less than twelve months), an affiliate can resale securities after the expiration *six months, subject to certain other conditions:*

- The number of securities to be resold must fall within specified volume limitations;
- The resale must comply with the revised "manner of sale" conditions; and

- The seller may be required to file a Form 144 reporting the sale (or proposed sale), subject to the new reporting threshold.

"Manner of sale" requirement were eliminated and the volume limitations were eased for resales of debt securities by affiliates.

The provisions of Rule 144 are not available for the resale of securities initially issued by a *shell company* unless one year has elapsed from the date Form 10 information has been filed with the Commission.

The chart below is reproduced from SEC Release No. 33-8869 and helps clarify the new rules.

	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	<p><i>During six-month holding period</i> - no resale under Rule 144 permitted.</p> <p><i>After six-month holding period</i> - may resell in accordance with all Rule 144 requirements, including: Current public information, Volume limitations, Manner of sale requirements for equity securities, and Filing of Form 144.</p>	<p><i>During six-month holding period</i> - no resale under Rule 144 permitted.</p> <p><i>After six-month holding period but before one year</i> - unlimited public resale under Rule 144 except that the current public information requirement still applies.</p> <p><i>After one-year holding period</i> - unlimited public resale under Rule 144; need not comply with any other Rule 144 requirements.</p>
Restricted Securities of Non-Reporting Issuers	<p><i>During one-year holding period</i> - no resale under Rule 144 permitted.</p> <p><i>After one-year holding period</i> - may resell in accordance with all Rule 144 requirements, including:</p> <ul style="list-style-type: none"> • Current public information, • Volume limitations, • Manner of sale requirements for equity securities, and • Filing of Form 144. 	<p><i>During one-year holding period</i> - no resale under Rule 144 permitted.</p> <p><i>After one-year holding period</i> - unlimited public resale under Rule 144; need not comply with any other Rule 144 requirements.</p>

If you have any questions about these requirements or this issue, please contact Bev Evans at 515-288-2500 or via e-mail at BevEvans@davisbrownlaw.com.

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