

PUBLICATION

New Amendments to SEC Rules 144 and 145

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On December 6, 2007, the Securities and Exchange Commission (SEC) released its Final Rule amending Rules 144 and 145 promulgated under the Securities Act of 1933 (the Securities Act). The amendments will be effective on February 15, 2008. The revised holding periods and other amendments are applicable to securities acquired before or after February 15, 2008.

Rule 144 provides a safe harbor for the sale of securities under the exemption in Section 4(1) of the Securities Act. The amendments to Rule 144 include:

- The holding period for restricted securities of reporting companies will be shortened to six months.
- Non-affiliates of reporting companies will be allowed to freely resell restricted securities after a six-month holding period (subject to the Rule 144(c) public information requirement until the securities have been held for twelve months).
- Non-affiliates of non-reporting companies will be allowed to freely resell restricted securities after a twelve-month holding period.
- For sales by affiliates, the manner of sale requirements will be eliminated for debt securities and will be revised for equity securities, permitting the resale of securities through "riskless principal transactions" and amending the definition of "brokers' transactions" in Rule 144(g) to provide that the posting of bid and ask quotations in alternative trading systems will be deemed not to be a solicitation. The volume limitations for sales by affiliates of debt securities will be raised to permit resales not exceeding 10% of a tranche, or 10% of a class when the securities are non-participatory preferred stock, together with all sales by the selling security holder of securities of the same tranche within a three-month period.
- For sales by affiliates, the thresholds that trigger Form 144 filing requirements will be increased from 500 shares or \$10,000 to 5,000 shares or \$50,000.
- Form 144 will not need to be filed for non-affiliates.

Rule 145 of the Securities Act provides that an exchange of securities in connection with a reclassification of securities, merger, consolidation or transfer of assets that is subject to shareholder vote is a sale of securities, and registration of the sale is required under Rule 145(a) unless a registration exemption is available. The amendments to Rule 145 eliminate the presumptive underwriter provision of Rule 145(c), except with respect to shell company transactions. In addition, where a party other than the issuer is a shell company, the party and its affiliates can resell the securities acquired in connection with a Rule 145(a) transaction only in accordance with the requirements of Rule 145(d).