

Allen Matkins



Matthew J. Ertman

Los Angeles

(213) 955-5579

mertman@allenmatkins.com



Nicholas M. Unkovic

Del Mar Heights

(619) 235-1567

nunkovic@allenmatkins.com

Related Practices:

- [Corporate & Securities](#)
- [Private Equity](#)
- [Emerging Company & Venture Capital](#)
- [Tax](#)

Corporate Alert

SEC Adopts Rule Amendments to Increase Liquidity and Decrease Issuer Capital Costs

On February 15, 2008, recently adopted amendments to Rule 144 and Rule 145 of the Securities Act will take effect. The amendments are intended to increase the liquidity of privately sold securities and securities acquired in business combinations by giving holders the ability to resell those securities more rapidly without registration under the Securities Act.

The Rule 144 amendments shorten the holding period for the resale of restricted securities of reporting companies from one year to six months, simplify the conditions for non-affiliates of reporting companies to freely resell restricted securities after satisfying the new six-month holding period, and allow non-affiliates of reporting companies to freely resell their securities without applying any other Rule 144 requirements after a one-year holding period. The amendments to Rule 145 generally limit restrictions on resale of securities acquired in business combination transactions to securities acquired from shell companies.

Rule 144

Rule 144 is the primary exemption from the registration requirements of the Securities Act for the resale of restricted and control securities. Restricted securities are generally securities acquired from an issuer in a private transaction, while control securities are securities owned by a shareholder who is an affiliate of the issuer. Rule 144 currently permits an affiliate or non-affiliate of an issuer to sell restricted securities after a one-year holding period, subject to the availability of current public information about the issuer, compliance with volume limitations, manner of sale requirements, and the filing of a Form 144 with the SEC. Currently, non-affiliate shareholders may sell restricted securities without any limitations after a two-year holding period.

The amendments dramatically reduce the holding periods and manner of sale requirements under the existing rule. The following is a brief summary of Rule 144 as amended:

- Affiliates and non-affiliates who own restricted securities of reporting companies may not sell their securities under Rule 144 during the first six-months.
- Affiliates who own restricted securities of reporting companies may, after a six month holding period, resell their securities in accordance with all Rule 144 requirements, including, current public information requirements, volume limitations, manner of sale requirements for equity securities, and filing a Form 144.
- Non-affiliates who own restricted securities of reporting companies may, after a six-month holding period but before one year, resell their securities under Rule 144, except that the current public information requirements still apply.
- Non-affiliates who own restricted securities of reporting companies may, after a one-year holding period, resell their securities under Rule 144 and they need not comply with any other Rule 144 requirements.
- Affiliates and non-affiliates who own restricted securities of non-reporting companies may not sell their securities under Rule 144 during the first year.
- Affiliates who own restricted securities of non-reporting companies may, after a one year holding period, resell their securities in accordance with all Rule 144 requirements, including, current

<http://www.jdsupra.com/post/documentViewer.aspx?fid=5b3e5160-af1d-43f7-9c24-b6dfb5e0f4e2>
public information requirements, volume limitations, manner of sale requirements for equity securities, and filing a Form 144.

- Non-affiliates who own restricted securities of non-reporting companies may, after a one-year holding period, resell their securities under Rule 144 and they need not comply with any other Rule 144 requirements.

Rule 145

Generally, under Rule 145, an exchange of securities in connection with a business combination transaction is considered a sale and must be registered under the Securities Act. Parties to these business combinations are presumed to be underwriters, and as a result, the resale of securities by these parties is restricted. Transactions regulated by the Rule include reclassifications, mergers, consolidations, and transfers of assets subject to a vote of security holders. The SEC has rescinded these restrictions except with respect to the securities of shell companies. The SEC has also tied the resale provisions in Rule 145 to the new requirements under Rule 144 applicable to resale of securities of shell companies.

For a detailed description of these revisions, please click here:

 [Securities and Exchange Commission: Revisions to Rules 144 and 145](#)

If you would like more information regarding this Alert or desire assistance in complying with the securities sale and resale requirements, please contact one of Allen Matkins' Securities Group attorneys.

Allen Matkins Leck Gamble Mallory & Natsis LLP has substantial experience in securities laws matters, especially in representing issuers and investors with regard to the sale and resale of securities, and we would be pleased to assist you with any of your questions.

Del Mar Heights (858) 481-5055

Randall K. Broberg
Joe M. Davidson
Clark H. Libenson
Nicholas M. Unkovic
Cheryl A. Withercombe

Orange County (949) 553-1313

William R. Ahern
Robert M. Hamilton
Kimo McCormick
Paul D. O'Connor
Philip C. Schroeder
John E. Stoner

Los Angeles (213) 622-5555

Matthew J. Ertman
Mark J. Grushkin
Debra Dison Hall
Thomas W. Henning
Paul Obico
Samuel H. Stein

San Diego (619) 233-1155

Aman Badyal
Michael C. Pruter
Allen B. Walburn

San Francisco (415) 837-1515

Roger S. Mertz
Roberta V. Romberg
D. Stanley Rowland

© 2008 Allen Matkins Leck Gamble Mallory & Natsis LLP. All rights reserved.

This email is intended for general information purposes only and should not be construed as legal advice or legal opinions on any specific facts or circumstances. This email was sent by: Allen Matkins Leck Gamble Mallory & Natsis LLP, 515 S. Figueroa Street, 7th Floor, Los Angeles, California 90071. To stop receiving this publication, just reply and enter "unsubscribe" in the subject line.