
Securities Law Handbook Series

Resales of Restricted Securities

2015 Edition

by J. William Hicks

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Foreword

It is axiomatic that the protection of investors justifies the imposition of certain restrictions on the transfer of securities. Thus, persons who want to sell unregistered securities may be faced with a variety of resale limitations predicated upon either the nature of the person attempting to resell or the nature of the transaction in which the holder acquired the securities.

Some resale limitations are the result of statutory or regulatory obligations imposed on the issuer or other transferor. In addition, administrative interpretations by the SEC account for other limitations on resale that security holders encounter. The most important of the SEC staff-created restrictions are found in Rule 144. Designed to assist holders of restricted securities to resell publicly in reliance upon the Section 4(a)(1) trading exemption, Rule 144 has been in effect for nearly forty years and generally is thought to have achieved its purpose of creating objective standards for the resale of restricted securities.

Significant developments in the regulation of the resale of restricted securities are the result of the SEC's amendments to Rules 144 and 145 and the addition of Rule 144A. Rule 144A provides a nonexclusive safe harbor from the registration requirements of the Securities Act that allows certain large institutional investors to trade private placement securities among themselves without having to register them with the SEC. The amendments to Rules 144 and 145 define the required holding period for restricted securities, whether acquired pursuant to Rule 144A or otherwise, as commencing at the time of the sale by the issuer or its affiliate. Also, Regulation S sets forth nonexclusive safe harbors for certain extraterritorial sales and resales of securities.

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Table of Abbreviations

ADR	American Depositary Receipt
Board	Federal Reserve Board
CBOE	Chicago Board Options Exchange
CEA	Commodity Exchange Act
CFTC	Commodity Futures Trading Commission
COD	cash on delivery
Commission	Securities and Exchange Commission
DK	don't know
DTC	Depository Trust Company
DVP	delivery versus payment
ESOP	employee stock ownership plan
FINRA	Financial Industry Regulatory Authority
FRB	Federal Reserve Board
FRRS	Federal Reserve Regulatory Service
MSRB	Municipal Securities Rulemaking Board
NASD	National Association of Securities Dealers, Inc.
NCM	Nasdaq Capital Market (formerly Nasdaq SmallCap Market)
NMS	National Market System
NNM	Nasdaq National Market
NSMIA	National Securities Markets Improvement Act
NRSRO	nationally recognized statistical rating organization
NSRO	nationally recognized statistical rating organization
NYSE	New York Stock Exchange
OCC	Options Clearing Corporation
OTC	over the counter
SEC	Securities and Exchange Commission
SMA	special memorandum account
SRO	self-regulatory organization

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