

## Help with Common Problems Completing Form 144

Please send any question that is not answered below to us by e-mail at [info@rule144letters.com](mailto:info@rule144letters.com) or call 1-602-957-9320, Ext. 1, for assistance. References herein to “broker” also refer to banks and other financial institutions that are licensed or chartered to directly or indirectly clear trades in securities.

1. Contact information regarding the issuer of the securities in Sec. 1 and Sec. 2 and their subparts on page one must be completed. The I.R.S. identification number or the SEC file number must appear. The broker can obtain this information from the issuer of the securities or the <http://www.sec.gov> website. If the issuer of the securities has failed to maintain a current telephone number on the company’s website and it is not available on Internet stock watch sites, the broker should call the stock transfer agent for the issuer of the securities to obtain this information.

2. Sec. 2 (b): The IRS identification number is not required if seller is a citizen of a country other than the U.S. who does not have a Social Security Number or if seller is a company formed outside of the U.S. that is not required to have an IRS employer identification number (EIN). If you enter “not applicable” the address listed for the seller would almost always be outside of the U.S.

3. Sec. 3 (a): This should state “Common Stock” unless the seller holds a different class of securities of the issuer that are traded on a stock exchange.

4. Sec. 3 (d): Choose a trading day within 90 calendar days of the estimated date on which the bank or broker will file seller’s Form 144 with the SEC. Multiply the numbers of shares to be sold times the price per share of the last trade on the trading day prior to the date on which Form 144 is filled out and enter the total dollar value in this field. The broker should indicate the date on which the aggregate market value was fixed.

5. Sec. 3 (e): The total number of the issued and outstanding shares for a reporting company may be obtained from the issuer’s most recent 10Q or 10K. This information is available at <http://www.sec.gov>. Information about the number of outstanding shares of a non-reporting company must be publicly available in the public reports of the issuer filed with the SEC or in reports filed with OTCMarkets.com. It is not enough to obtain this information from the issuer or the stock transfer agent of the issuer. Brokers and their clearing firms will require a recognized published public source of this information other than the issuer’s website. If the issuer is not a reporting or voluntarily reporting company under the 1934 Act, the issuer must include the number of issued and outstanding shares as part of (a) a Form 15c2-11, (b) a statement of profit and losses and retained earnings or (c) a quarterly or annual financial statement on <http://www.otcm Markets.com>.

6. Sec. 3 (f): If the sale of securities has already taken place, enter the actual date(s) that the trade(s) took place. If the sale of securities has not yet taken place (a

proposed sale), the broker may enter any projected date for the sale that falls between the day that Form 144 is filed and the 90<sup>th</sup> day after the filing of Form 144.

7. Sec. 3 (g): The options are:

a. OTCMarkets.com provides broker-dealers, issuers and investors with electronic and print products and information services. OTCMarkets.com has an Internet-based, real-time quotation service for OTC equities and bonds for market makers and brokers known as the Electronic Quotation Service. The financial web portal for information about OTC securities is [www.otcmarkets.com](http://www.otcmarkets.com). An issuer of the securities trading only on OTCMarkets.com must be in compliance with the publicly available information requirement of Rule 144(c). Some of the levels of listing are OTCPink, OTCQB and OTCQX. Please note that the Rule 144 safe harbor is not available if the non-reporting company has ever been a shell company as defined in Rule 405 until and unless the company has ceased being a shell company, has filed Form 10-like information and has been subject to the 1934 Act and has remained current in its 1934 Act filings for 12 months (also referred to as become a “mandatory filer”).

b. NYSE. New York Stock Exchange

c. NYSE.MKT (formerly known as the American Stock Exchange [AMEX] and NYSE American)

d. NASDAQ (small cap, midcap and large cap tiers)

**Rule 405 defines a shell company as a company that has:**

No or nominal operations; and either: (1) No or nominal assets; (2) Assets consisting solely of cash and cash equivalents; or (3) Assets consisting of any amount of cash and cash equivalents and nominal other assets

**Rule 144(c) Current Public Information Requirements**

Affiliates are not eligible to resell restricted securities pursuant to the Rule 144 safe harbor unless current public information required by Rule 144(c)(1) is available for reporting companies and information required by Rule 144(c)(2) and 15c2-11 is available regarding non-reporting companies. Non-affiliates of 1934 Act reporting companies who have held their restricted shares for at least six months but no more than one year are subject to the same limitation. The Rule 144 safe harbor is not available for affiliates or non-affiliates of a non-reporting company that has ever been a shell company as defined by Rule 405 until and unless the company has fully complied with Rule 144(i)(2).

**Reporting companies** must have been subject to the reporting requirements of the 1934 Exchange Act for at least 90 days and must have filed all required reports

under the Exchange Act during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8-K reports.

The information is considered publicly available as required by Rule 144(c) for **non-reporting companies** if it is posted on [www.otcmarkets.com](http://www.otcmarkets.com) and/or on the issuer's website, and it is considered adequate and reasonably current if it meets the requirements described below:

1. The issuer's last balance sheet is for a period ending less than 16 months before the publication or submission of the quotation, and the statement of profit and loss and statement of retained earnings is for the 12 months preceding the end of the period for which such balance sheet was prepared, and
2. If the end of the period for which the issuer's last balance sheet was prepared was more than six (6) months before the publication or submission of the quotation, a profit and loss statement and a statement of retained earnings is available for a period ending no more than six (6) months before the quote was published or submitted; and
3. The issuer's year-end balance sheets are available for that part of the two (2) preceding fiscal years as the issuer (or its predecessor) has been in existence; and
4. All other information required to be available regarding the issuer by Rule 15c2-11 is correct as of a date within 12 months before the publication or submission of the quotation.

Interpretations by the Securities and Exchange Commission regarding Current Public Information:

1. If securities are sold pursuant to Rule 144 at various times over a three-month period, the issuer must continue to satisfy the current public information requirement at the time each sale is made, not just at the beginning of the period when Form 144 is filed.
2. There is a risk in selling under Rule 144 during the 15-day period following the filing of Form 12b-25 (notification of late filing), because, if the missing report or portion thereof is not filed during that period, the issuer may be deemed not current until it is filed.
3. The current public information requirement does not require the financial statements of non-reporting issuers to be either audited or prepared in compliance with Regulation S-X.

b. "OTCBB" Over-the-Counter Bulletin Board) (The OTCBB is a quotation medium for subscribing members, not an issuer listing service, and should not

be confused with The NASDAQ Stock Market Inc. There are other levels requiring that companies meet higher standards including OTCQX and OTCQB.

- c. "NASDAQ stock market" (NASDAQ is the largest U.S. electronic stock market.)
- d. "NYSE.MKT", formerly "AMEX" (the American Stock Exchange)
- e. "NYSE" (the New York Stock Exchange)
- f. Any other registered national securities exchange or quotation medium

8. **Form 144 Table I** (second page of Form 144):

a. **Title of the Class** is almost always "common" because markets are less often made in preferred or other classes of securities.

b. **Nature of Acquisition Transaction** requires a statement regarding the circumstances under which the Shareholder acquired the shares, such as:

- (1) through a private placement from the issuer of the securities;
- (2) through a private placement from a shareholder;
- (3) through a public offering or in the public market;
- (4) through a merger or acquisition;
- (5) (a) as a gift, (b) as an inheritance from an estate or (c) as a distribution from a trust;
- (6) as part of a partnership distribution;
- (7) as compensation for past services;
- (8) by virtue of a Regulation S stock placement agreement from the issuer of the securities;
- (9) from a third party who purchased through a Regulation S stock placement agreement from the issuer of the securities;
- (10) by shareholder's conversion of a debt owed by the issuer of the securities to shareholder to common stock (provide documentation of loan and conversion), or

(11) through a purchase that did not require a Rule 144 legend to be placed on the stock because of the nature of the transaction, but the certificate representing the shares was restricted solely because shareholder was or became an affiliate of the issuer of the securities.

c. **Name of Person from Whom Acquired:** As direct as this question is on its face, many shareholders provide incorrect information to their broker or bank in response to this question. Please list the issuer of the securities or, if it is a secondary transaction, the prior owner of the securities. This is not a request for information about (1) an investment advisor that only recommended that shareholder purchase the shares or that merely facilitated the transfer of the shares from a prior owner of the shares to the current shareholder, (2) a broker-dealer or bank that sent or received the funds for the purchase of the shares acquired by the current shareholder or (3) a consultant that may have recommended or arranged for the purchase.

d. **Date of payment:** This is not the date written on the seller's check issued in payment for the shares or the date on which the seller may have wired funds to pay for the shares. It is the day on which the issuer of the securities (or prior shareholder from whom seller acquired the shares) accepted payment of good funds and caused the shares to be transferred to seller. One source of this information would be a subscription agreement signed and dated by the issuer of the securities. If the seller received the shares as a gift, an inheritance from an estate, a distribution from a trust, a distribution by a partnership or other transaction not involving payment, enter "None," but briefly and clearly explain why no payment was made by the current shareholder, who paid for the shares and when payment in full for the shares was made. These issues are especially important if the issue date on the stock certificate is more recent than the claimed holding period. If the date on the certificate is consistent with the claimed holding period, it is almost always satisfactory to enter "on or before (and enter the date on which the certificate was issued)." Also see the help note on page 1 of Form 144 regarding disclosure of details of when payment in full was made if part of the consideration for the shares was paid after the issuance of the stock certificate.

e. **Nature of Payment:** This is different than the method of payment, which would typically be by check, wire transfer, etc. Enter, for example, payment of good funds, an exchange of stock in a privately-owned company for stock in a public company as a result of a merger, compensation for services rendered to issuer, conversion of debt owed by issuer to shareholder, exercise of warrant (or option) or exchange an asset for the shares (with a brief and clear description of the asset exchanged for the shares). If no payment was made because the shares were received as a result of a gift, an inheritance from an estate, a distribution from a trust, a distribution by a partnership or other transaction not involving payment, enter "None," and briefly and clearly explain

why no payment was made by the current shareholder, who paid for the shares and when payment in full for the shares was made.

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