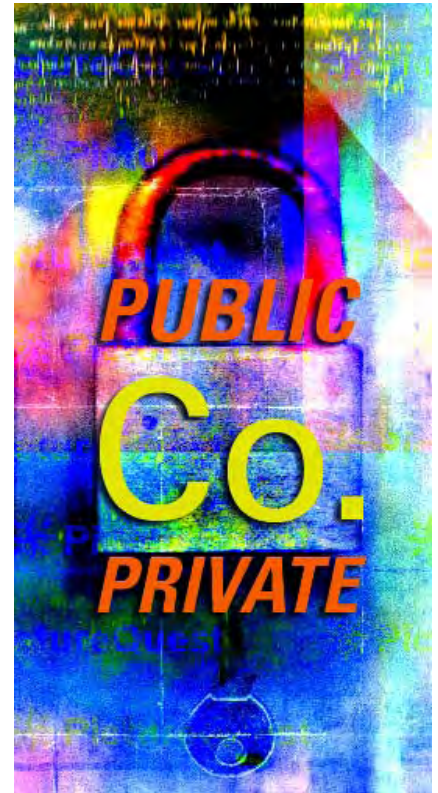


## SEC Shortens Holding Periods for Unregistered Stock – SEC Adopts Revisions to Rules 144 and 145

On November 15, 2007 the Securities and Exchange Commission (SEC) announced amendments to Securities Act Rules 144 and 145 that are intended to reduce the cost of capital and increase access to capital.

The amendments:

- Shorten the holding period for unregistered securities held by non-affiliates to permit unlimited public resales after six months for public companies and after twelve months for private companies;
- Shorten the holding period for unregistered securities held by affiliates to permit limited public resales after six months for public companies; and
- Simplify Rule 144 compliance, including raising the thresholds that trigger a Form 144 filing.



### Sales of Unregistered Securities by Non-Affiliates

As a result of the amendments, non-affiliates of public, reporting companies will be permitted to freely resell unregistered securities after meeting a holding period of six months, so long as the company meets the public information requirements of Rule 144(c) (and may freely resell after holding the securities for one year). Non-affiliates of private, non-reporting companies will be permitted to freely resell unregistered securities after meeting a holding period of one year. Previously, all non-affiliates were permitted to make only limited resales after a holding period of one year, and unlimited resales after a holding period of two years. Non-affiliates will no longer be subject to the manner of sale requirements contained in Rule 144 or be required to file a Form 144.

The SEC decided not to adopt a provision that would have tolled the holding period while a non-affiliate is engaged in certain hedging transactions.

### Sales of Unregistered Securities by Affiliates

Affiliates of public, reporting companies will be permitted to make limited resales after holding unregistered securities for at least six months. Affiliates of private, non-reporting companies will continue to be permitted to make limited resales after holding unregistered securities for at least one year. The amended rule will also eliminate the manner of sale requirements for debt securities. A Form 144 will be required to be filed with the

SEC if the affiliate intends to sell within any three-month period in excess of 5,000 shares or \$50,000 (as opposed to the current thresholds of 500 shares or \$10,000).

The SEC decided not to adopt a provision that would have tolled the holding period while an affiliate is engaged in certain hedging transactions.

## Additional Changes

The amendments also simplify and streamline the preliminary note to Rule 144 and codify a number of SEC Staff interpretations related to the Rule. Despite receiving favorable comments on the topic, the SEC decided not to combine Form 4 and Form 144, but such an action will continue to be considered and may be taken up by the SEC Staff in the future.

In connection with the changes to Rule 144, Rule 145 will be amended to eliminate the presumptive underwriter provision, except for transactions involving blank check or shell companies. Additionally, the amendments also modify the resale provisions of Rule 145(d) to conform with the Rule 144 changes.

The SEC's rule proposal, which was adopted substantially as proposed, can be found online here: <http://www.sec.gov/rules/proposed/2007/33-8813.pdf>. The final rules will be available on the SEC's website shortly, and will become effective 60 days after publication in the Federal Register.

Detailed guidance regarding the amendments to Rules 144 and 145 will be provided as the amended rules become effective. If you would like to discuss the impact of the amendments, please contact a member of our [Business and Finance Practice Group](#) or contact the author: Kevin McGill at 404.572.4590 or [kmcgill@pogolaw.com](mailto:kmcgill@pogolaw.com).

This PoGo Alert is prepared by the Business and Finance Practice Group of Powell Goldstein LLP as a PoGo service. The information discussed is general in nature and may not apply to your specific situation. Legal advice should be sought before taking action based on the information discussed.

Atlanta ■ Washington ■ Dallas ■ Charlotte

One Atlantic Center  
Fourteenth Floor  
1201 West Peachtree Street, NE  
Atlanta GA 30309  
Tel: 404.572.6600  
Fax: 404.572.6999

Third Floor  
901 New York Avenue, NW  
Washington DC 20001  
Tel: 202.347.0066  
Fax: 202.624.7222

JP Morgan Chase Tower  
2200 Ross Avenue, Suite 3300  
Dallas TX 75201  
Tel: 214.721.8000  
Fax: 214.721.8100

Tenth Floor  
401 North Tryon Street  
Charlotte NC 28202  
Tel: 704.998.5480  
Fax: 704.998.5481

[www.pogolaw.com](http://www.pogolaw.com)