

## SEC Compliance and Disclosure Interpretations, Section 532. Rule 144(d)—Holding Period for Restricted Securities, Securities and Exchange Commission

[Click to open document in a browser](#)

### ¶2850 [Pledgees]

#### 532.01

A pledgor who is an affiliate defaults on a loan that is secured, either with or without recourse, by a bona fide pledge of company stock acquired in the open market (*i.e.*, these securities are not "restricted securities" in the pledgor's hands). In the pledgee's hands, these securities are "restricted securities" because they have been "acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving any public offering." If the pledgee is a non-affiliate and has not been an affiliate during the preceding three months, the pledgee may resell such securities pursuant to [Rule 144](#)(b)(1) without regard to the holding period requirement in [Rule 144](#)(d) but subject to the current public information requirement in [Rule 144](#)(c)(1), as applicable. No other requirements in [Rule 144](#) are applicable to the pledgee's resale.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009; modified May 16, 2013.

### ¶2851 [Preferred Stock]

#### 532.02

If a preferred stockholder tenders shares to the issuer and receives in return cash plus a new series of preferred, the stockholder may tack its holding period for the old preferred to that for the new series.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

### ¶2852 [Closely-Held Partnerships]

#### 532.03

New investors in a closely-held investment partnership, and existing partners to whom assets have been redistributed upon withdrawal of other partners, may rely on the position on tacking set forth in Question 34(a) in [Securities Act Release No. 6099](#) (Aug. 2, 1979), provided the fundamental character of the partnership is not changed.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

### ¶2853 [Stock-for-Stock Acquisitions]

#### 532.04

In a stock-for-stock acquisition, the closing will be delayed until the acquired corporation's year-end revenues have been determined, giving the acquiring corporation an "out" if such revenues do not reach a pre-determined level. The [Rule 144](#) holding period for recipients of the acquiring corporation's stock will not begin until the closing because the recipients will not be at economic risk until that time.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2854 [Closely-Held Corporations]

### 532.05

A closely-held corporation distributes restricted securities of an issuer pro rata and without consideration to its shareholders, which are three limited partnerships. Each of these limited partnerships, in turn, distributes the restricted securities pro rata and without consideration to its partners (about 10 people in each instance). Tacking of holding periods from corporation to partnerships, and from partnership to partners, is permitted for purposes of [Rule 144\(d\)](#).

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2855 [Employment Agreements]

### 532.06

Question 22 of [Securities Act Release No. 6099](#) (Aug. 2, 1979), dealing with the holding period under [Rule 144\(d\)](#) for restricted securities under an employee benefit plan, does not apply where restricted securities are issued to an employee in connection with an individually negotiated employment agreement. The employee's holding period begins to run at the time the securities vest, assuming any conditions, such as continued employment, have been fulfilled.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2856 [Liquidations]

### 532.07

Pro rata redemptions of partnership interests in a closely-held investment partnership with partners receiving distributions of restricted securities in kind, as, for example, in liquidation, would allow partners to tack the partnership holding period for purposes of [Rule 144\(d\)](#).

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2857 [Affiliate Transfers]

### 532.08

An affiliate transfers restricted stock to a corporation of which the affiliate owns 84%. The corporation intends to sell the restricted stock and convey to the affiliate an interest in the corporation equal to the proceeds of the sale. Tacking by the corporation of the affiliate's holding period would not be permitted for purposes of [Rule 144](#) because the transfer to the corporation is deemed to be a private sale which commences a new holding period for the purchaser.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2858 [Promissory Notes]

### 532.09

---

©2016 CCH Incorporated and its affiliates and licensors. All rights reserved.

Subject to Terms & Conditions: [http://researchhelp.cch.com/License\\_Agreement.htm](http://researchhelp.cch.com/License_Agreement.htm)

Investor A purchased 100 shares of restricted stock of a reporting company by executing a promissory note which did not meet the requirement of [Rule 144\(d\)\(2\)](#). Since this obligation is not considered to be "full payment of the purchase price" under the rule, Investor A's holding period commences only at such time or times as Investor A actually makes payment on the note. Investor A paid off half the amount of the note over six months ago and, accordingly, the holding period requirement for 50 shares (half the total of 100) has been met. Investor A recently sold 50 shares of the restricted stock in a registered offering. The question presented was whether the shares sold in the registered offering must be regarded as the shares as to which the holding period had run. Although [Rule 144](#) does not establish a guide for this situation, it was decided that Investor A could deem the registration statement to relate solely to the shares for which the holding period requirement had not been satisfied. As a result, Investor A may now sell all of the remaining 50 shares under [Rule 144](#), assuming [Rule 144\(c\)](#) is satisfied.

Reference: [Rule 144\(c\)](#) and [\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2859 [Contingent Payments]

### 532.10

Securities have been escrowed by an issuer as a contingent payment in connection with an acquisition. The escrow agreement gives the intended beneficiary the right to sell the securities during the life of the escrow, on condition that the sale proceeds are returned to the escrow account. [Rule 144\(d\)\(3\)\(iii\)](#) provides that securities acquired as a contingent payment in connection with the sale of a business shall be deemed to have been acquired at the time of the sale, for purposes of the holding period requirement of [Rule 144\(d\)](#). This provision, however, applies only to those securities that have actually been acquired in satisfaction of a contingency. Since the shares in this case are still subject to a contingency and have not been formally acquired, the beneficiary may not rely on [Rule 144\(d\)\(3\)\(iii\)](#) to satisfy the holding period requirement of the rule for sales made during the period the escrow arrangement is in effect.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2860 [Compensation or Gift]

### 532.11

A corporation distributes to its employees as a bonus restricted securities of an affiliated issuer which it acquired at an earlier date. For purposes of the holding period provisions of [Rule 144\(d\)](#), the employees would not be able to tack the corporation's holding period to their own. The employer-employee relationship of the parties suggests that the distribution is being made as a form of compensation for services rendered, rather than as a gift (for which tacking would be permitted).

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2861 [Price Hook Plans]

### 532.12

An employee acquires restricted stock pursuant to a "price hook" plan, whereby the employee pays only a portion of the purchase price when acquiring the stock from the company. The remainder is to be paid when the stock is resold. The stock may not be resold under [Rule 144](#), because the holding period requirement cannot be met under this arrangement, as the stock will not be fully paid for until the time of sale.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2862 [Convertible Notes with Interest]

### 532.13

Convertible notes with accrued but unpaid interest are exchanged for shares of the issuer. The holding period for the notes can be tacked to the holding period on the shares under [Rule 144\(d\)\(3\)\(ii\)](#) only if the exchange "consist[s] solely of other securities of the same issuer." Although the right to receive payment for the accrued interest could be construed as additional consideration that is inconsistent with [Rule 144\(d\)\(3\)\(ii\)](#), the holding period for the convertible notes can be tacked to the holding period for all of the shares received in the exchange. This position is consistent with [Securities Act Section 3\(a\)\(9\)](#), which exempts certain exchanges where securities of the same issuer are the only consideration.

Reference: [Rule 144\(d\)](#); [Securities Act Section 3\(a\)\(9\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2863 [Minimum/Maximum Basis Offerings]

### 532.14

A private offering is made on a minimum/maximum basis (i.e., shares are not issued and proceeds not delivered to the company from an escrow account unless a minimum amount is sold). The [Rule 144](#) holding period for shares acquired in such an offering would begin at the time a shareholder pays for its shares and its payment is deposited in the escrow account. At that time, the shareholder is at risk for purposes of [Rule 144\(d\)](#), since it is committed to participating in the offering if the minimum amount is sold.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2864 [Change of Domicile]

### 532.15

A Nevada corporation that holds restricted securities of another issuer effects a merger to change its domicile to Delaware. The restricted securities become the property of the Delaware successor as a result of the merger. Because of the exception for migratory transactions in [Rule 145\(a\)\(2\)](#), the merger is not a sale within the meaning of the Securities Act. The holding period of the Nevada predecessor for the restricted securities is not disturbed by the succession.

Reference: [Rule 144](#); [Rule 145\(a\)\(2\)](#)

History: Issued July 1997; modified April 2007.

## ¶2865 [Foreign Private Issuers]

### 532.16

The holder of restricted securities of a foreign private issuer exchanges them for an equivalent number of American Depositary Receipts ("ADR") with the depository. The ADR will be a restricted security itself with a holding period identical to that on the underlying security. The ADR may be sold in reliance on [Rule 144](#) to the same extent the underlying security could have been sold. Note that [Form F-6](#), which relates to the issuance of depository shares evidenced by American Depositary Receipts, requires that the deposited securities be offered

and sold in transactions registered under the Securities Act or exempt from registration. See General Instruction I.A(2) of [Form F-6](#).

Reference: [Rule 144](#); [Form F-6](#)

History: Issued July 1997; modified April 2007.

## ¶2866 [Pledges]

### 532.17

An affiliate holder of restricted securities bona fide pledges the securities to a bank to secure payment of a loan. In the event of default, the bank is required to exhaust the collateral before proceeding against the pledgor personally. For purposes of [Rule 144\(d\)\(3\)\(iv\)](#), the pledge is a recourse arrangement, so that the bank will have the benefit of the pledgor's holding period.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2867 [Collateral Standard]

### 532.18

A promissory note, secured by the restricted securities purchased with the note, will meet the collateral standard of [Rule 144\(d\)\(2\)\(ii\)](#) if the note is also secured by other property with independent fair market value at least equal to the purchase price of the restricted securities.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2868 [Promissory Notes and Cash]

### 532.19

An officer purchases securities from an issuer paying the full purchase price in cash. Thereafter, the officer purchases an equal number of shares through the use of a promissory note, securing the note with the officer's first purchase of securities. The use of such collateral to secure the promissory note is within the requirements of [Rule 144\(d\)\(2\)\(ii\)](#), and the holding period for the second purchase would begin when the note is given to the issuer.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2869 [Payment]

### 532.20

A company sold shares to its employees pursuant to a private placement. The employees could borrow the entire purchase price from a non-affiliate bank, giving a note guaranteed by the company and placing the shares in escrow. If the company had to repay the note, it could repurchase the shares at book value. This arrangement, in substance, is the same as giving a note to the company in payment for the shares, and therefore, pursuant to [Rule 144\(d\)\(2\)](#), full payment of the purchase price has not been satisfied.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2870 [Cashless Exercise of Warrants]

### 532.21

A non-affiliate acquired warrants from an issuer more than two years ago in partial consideration for the sale of a subsidiary. The non-affiliate wanted to pay the exercise price with shares of the issuer that it planned to purchase just prior to the exercise (for tax reasons) and then tack the holding period of the warrants to the holding period for the shares received upon exercise. The holding period of warrants that are turned in for the spread's worth of shares underlying the warrants (a "cashless exercise") can be tacked to the holding period for the shares received. However, under these facts, because the proposed transaction would allow the non-affiliate to do indirectly what the non-affiliate could not do directly (pay the exercise price in cash and tack the holding period of the warrants to the holding period of the shares received upon exercise), tacking would not be permitted under [Rule 144](#). A person using securities to exercise restricted stock purchase warrants should use the shorter of the holding period on the warrants or on the other securities used in payment to find the holding period for the shares received on exercise.

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2871 [Cashless Exercise of Warrants]

### 532.22

Where a seller surrendered a secured promissory note of the issuer as consideration for the cashless exercise of a warrant from the same issuer, the Division staff was of the view that the holding period of the note could not be tacked to the common stock received upon the exercise of the warrant. Under the particular facts, the note did not appear to be a "security" under the standards enunciated in *Reves v. Ernst & Young*, 494 U.S. 56 (1990), and therefore, it would not qualify as a security of the issuer for purposes of tacking under [Rule 144\(d\)\(3\)\(ii\)](#).

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007 and January 26, 2009.

## ¶2872 [Hypothecation Agreement]

### 532.23

An affiliate of an issuer secures a loan with restricted securities. The restricted securities are hypothecated to the lender, rather than pledged, and an irrevocable stock power is granted. On a default under the loan, the lender could use the two instruments to cause legal title to be transferred to itself. For purposes of the lender's holding period calculation, the hypothecation agreement and the irrevocable stock power may be construed as the equivalent of a pledge. Subject to the requirements for good faith and recourse against the borrower, the lender would be able to use the borrower's holding period under [Rule 144\(d\)\(3\)\(iv\)](#).

Reference: [Rule 144\(d\)](#)

History: Issued July 1997; modified April 2007.

## ¶2873 [Convertible Notes]

### 532.24

A company issues a convertible note with interest payable in shares of the company. The decision to pay the interest on the convertible note in the form of shares is solely at the discretion of the company. In determining whether the [Rule 144\(d\)\(1\)](#) holding period requirement has been satisfied in regard to such shares received as interest, the holding period of the note may be tacked to the holding period of the shares.

Reference: [Rule 144\(d\)](#)

History: Issued January 26, 2009; modified April 24, 2009.