

PART I



What is a Rule 144 Seller's Representation Letter?

In the seller's representation letter, the selling shareholder represents that he is aware of the selling requirements of Rule 144 and will abide by them when selling his shares into the marketplace. Amongst other things, he will represent that he:

- has beneficially owned the shares for the required amount of time;
- is *or is not* an affiliate of the issuer;
- is not an underwriter;
- has the intent to sell the shares in a public transaction; and
- will sell the shares pursuant to the requirements of Rule 144.

Why is the Seller's Representation Letter important?

In the past, non-affiliate shares that were held for at least two years could essentially become "free-trading" under Rule 144 without much supporting documentation. Those were the good ole days.

The SEC revised Rule 144 in 2008. They cut the required holding periods in half, which is great, but reworded the Rule to read that only shareholders with *the intent to sell the shares in the public marketplace* could rely on Rule 144 to have the legend removed. This means shareholders who have held their shares for the required amount of time, but have no intent to sell them publicly at some point in the future, technically cannot have the legend removed under Rule 144.

Another change in 2008 is that shares of a "shell" company cannot be sold under Rule 144 while the company is a shell (more on this in another newsletter). ***If the 144 legend is removed from a block of stock today, and the issuer becomes a shell tomorrow, the shareholder cannot sell under Rule 144. Regardless of the presence of a legend on the stock certificate, it is the shareholder's responsibility to uphold Rule 144 and sell only when the exemption is available to them.***

Therefore, the seller's representation letter is the crux of the Rule 144 legend removal process today. This is the only document that the issuer, attorney, transfer agent, and broker can truly rely on in establishing the shareholder's intent to uphold Rule 144 when reselling the shares.

Who should sign it?

The shareholder who plans on selling the shares *into the marketplace* should sign the Seller's Representation Letter stating he will sell the shares properly. This may sound like an obvious response, but we field questions about this document daily. Understanding the important function of this document helps when determining who needs to sign it.

Disclaimer

The information contained herein is general in nature, is not legal advice, and should not be treated as such. You must not rely on the information here as an alternative to legal advice from your attorney or other professional legal services provider.

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