



Cooley

## Resales of Restricted and Control Securities Under Rule 144

### Overview of Rule 144

The Securities Act requires registration of all offers and sales of securities unless there is an available registration exemption. Section 4(a)(1) of the Securities Act provides one such exemption, for offers and sales “by a person other than an issuer, underwriter, or dealer.” Because an underwriter can be anyone who purchased securities from the issuer or affiliate “with a view to distribution” or who sells for an issuer or affiliate in connection with a distribution, affiliates of the issuer, or resellers who sell shares on behalf of an affiliate, may be deemed underwriters under this definition.

Rule 144 provides a “safe harbor” exemption from registration to sellers, permitting public resales of (1) restricted securities and (2) any securities held by affiliates (aka control securities) if certain conditions are met. If all applicable conditions of Rule 144 are met, the person in question (i.e., the seller or broker) will not be deemed an underwriter for purposes of Section 4(a)(1), and will be permitted to resell their securities without registration.

See the Appendix for a flowchart to determine whether resales are permitted under Rule 144.

### Key Terms

“**Affiliate**” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the issuer. Directors and executive officers of companies are generally presumed to be affiliates. Typically, a fund that has an associated individual serving as a director of the company is considered an affiliate. Additionally, a stockholder who owns 10% or more of any class of securities of a company is generally presumed to be an affiliate. A fund that owns less than 10% of any class of securities of a company and does not have an individual serving as a director may, nevertheless, be deemed to be an affiliate if it could exercise control over the company given the particular facts and circumstances of the relationship.

“**Control securities**” are securities held by an affiliate of the issuer, regardless of how the affiliate acquired the securities. For example, if an affiliate buys securities in the open market or a registered offering, then the shares are not considered restricted securities but become “control” securities once the affiliate owns them.

“**Restricted securities**” are securities acquired in unregistered sales from the issuer or an affiliate of the issuer not involving any public offering. These can include (i) direct purchase from the issuer in a private placement, such as under Section 4(a)(2) or Regulation D, (ii) acquired from company through unregistered employee stock benefit plans or other compensation for professional services under Rule 701, (iii) stock issued prior to an issuer’s IPO, or (iv) private sale or gift from an affiliate.

### Procedural Requirements of Rule 144

1. **Holding Period (for restricted securities only).** A seller must hold restricted securities for a certain period of time. The holding period begins when the securities are bought from the issuer or an affiliate of the issuer and fully paid for. The relevant holding period is based on the reporting status of the issuing company:
  - a. If the issuer has been a reporting company under the Exchange Act for at least 90 days, the holding period is six months. After six months, the seller can sell his or her securities subject to meeting all other applicable conditions to resale under Rule 144.

- b. If the issuer is a non-reporting issuer, or has been a reporting company under the Exchange Act for less than 90 days, the holding period is one year.

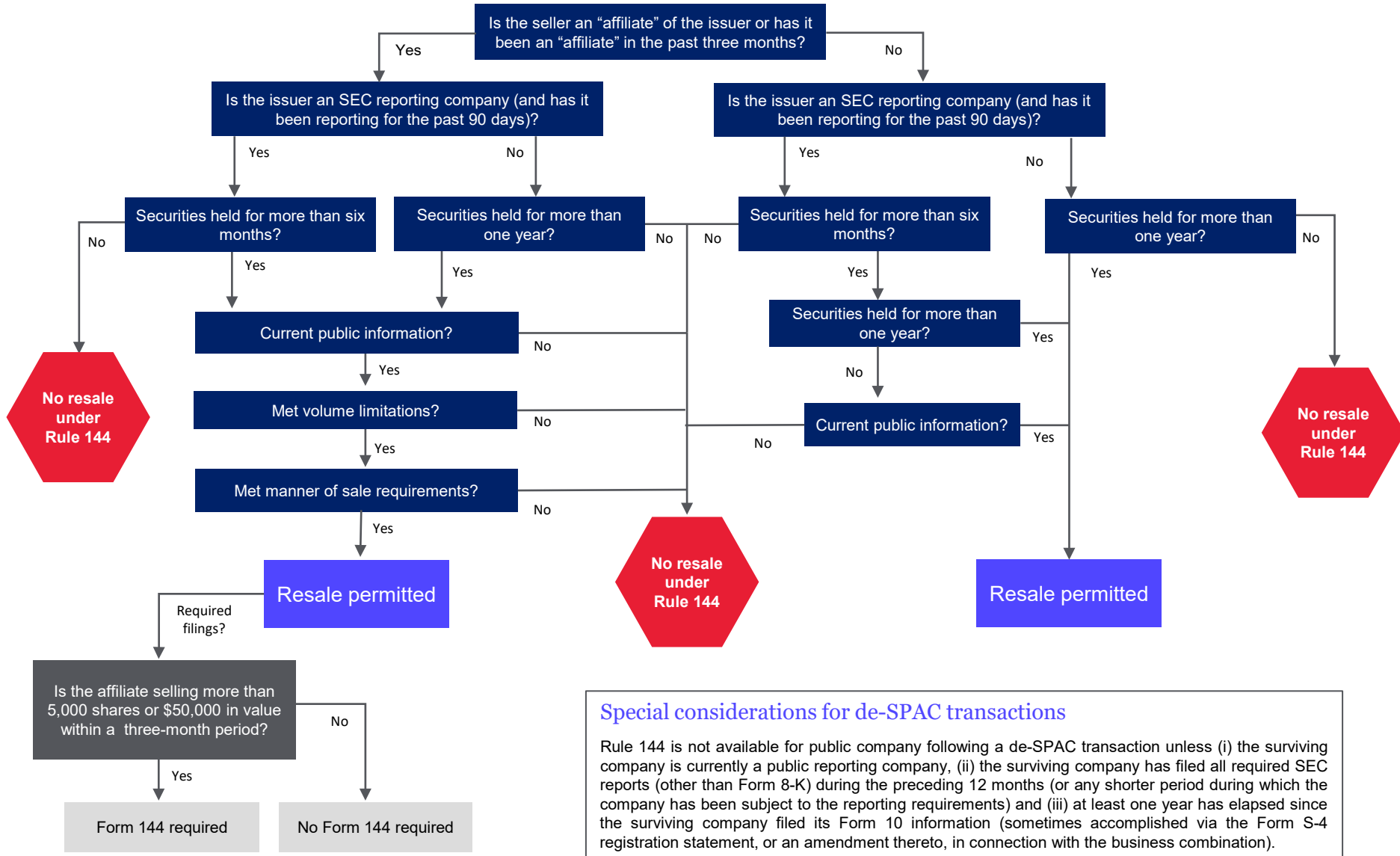
The time period for which securities are held includes the holding period of a prior security into which the current security converted without additional consideration. For example, the holding period for common stock acquired upon conversion of preferred stock includes the time the preferred stock was held. Similarly, the holding period for common stock acquired upon a net exercise of a warrant (but not the cash exercise of a warrant) includes the time the warrant was held.

2. **Volume Limitations.** The amount of securities sold, together with all other sales of securities of the same class within the prior 3 months, for an affiliate's account may not exceed the greater of: (a) 1% of the shares of the class outstanding as reported in the most recent report or statement published by the issuer, and (b) the average weekly exchange reported volume of trading in such securities during the four calendar weeks preceding the applicable Form 144 filed. Under certain circumstances, sales by others may be aggregated with sales by the seller, such as in the case of gifts or pledged securities and in-kind distributions by affiliate funds to affiliates of the issuer.
3. **Current Public Information.** For a publicly traded company, this refers to the company having filed, for the past 12 months (or such shorter period that the company has been public), all periodic reports and all other reports required to be filed by it under the Exchange Act (other than Form 8-K) and the company having complied with the requirement to submit interactive data files. For a private company, this term refers to certain information identified in Rule 15c2-11 being publicly available, including the name of the issuer, its address, the state of incorporation, the nature of its business, the nature and extent of the issuer's facilities, etc.
4. **Manner of Sale Requirements.** Securities sold under Rule 144 by or for the account of affiliates must be sold in a brokers' transaction, transactions directly with a market maker, or in a riskless principal transaction.
5. **Filing a Notice of Proposed Sale with the SEC.** An affiliate seller must file a notice of the proposed sale on Form 144 with the SEC if the resale involves more than 5,000 shares or has an aggregate value of more than \$50,000 within a three-month period.

	"Restricted Securities"		Unrestricted "Control Securities"
	Seller		Seller
Issuer	Affiliates	Non-Affiliates	Affiliates
<b>SEC Reporting Company</b>	<b>Holding Period – Six Months</b> <b>Volume Limitations</b> <b>Current Public Information Required</b> <b>Manner of Sale Restrictions</b> <b>File Notice on Form 144</b>	<b>Holding Period – Six Months</b> No Volume Limitations <b>Current Public Information Required*</b> No Manner of Sale Requirements No Form 144 Filing Required  *if holding period is <12 months	Holding Period - None <b>Volume Limitation</b> <b>Current Public Information Required</b> <b>Manner of Sale Restrictions</b> <b>File Notice on Form 144</b>
<b>Non - Reporting</b>	<b>Holding Period – One Year</b> <b>Volume Limitations</b> <b>Current Public Information Required</b> <b>Manner of Sale Restrictions</b> <b>File Notice on Form 144</b>	<b>Holding Period – One Year</b> No Volume Limitations No Current Public Information Requirement No Manner of Sale Requirements No Form 144 Filing Required	Holding Period - None <b>Volume Limitations</b> <b>Current Public Information Required</b> <b>Manner of Sale Restrictions</b> <b>File Notice on Form 144</b>

Note: If the issuer is, or has been at any time previously, a shell company, Rule 144 may not be available.

# Appendix: Resales of Restricted Securities Under Rule 144



## Special considerations for de-SPAC transactions

Rule 144 is not available for public company following a de-SPAC transaction unless (i) the surviving company is currently a public reporting company, (ii) the surviving company has filed all required SEC reports (other than Form 8-K) during the preceding 12 months (or any shorter period during which the company has been subject to the reporting requirements) and (iii) at least one year has elapsed since the surviving company filed its Form 10 information (sometimes accomplished via the Form S-4 registration statement, or an amendment thereto, in connection with the business combination).

This document is a summary of Rule 144 as generally applied, and it does not attempt to provide a complete description of Rule 144 or any legal advice for any particular situation. Each particular situation must be analyzed individually in light of all the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the application of Rule 144, it is critical that counsel be involved. This document is not to be copied, used or distributed without the express written consent of Cooley LLP. © 2025 by Cooley LLP