

Submitted by: Buck Consultants

Client: American Stock Transfer & Trust Company, LLC (AST)

Project: AST's Guide to the Sale and Transfer of Restricted and Control Securities

## Document Summary

This document contains background information about the client, the objective of the project and the results. At the end, we provide the final version of the document that was created.

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## About AST

American Stock Transfer & Trust Company, LLC (AST) provides comprehensive stock transfer and employee plan services to over 2,800 public companies and maintains approximately 6,000 issues. Their clients are located throughout the United States and in over 22 foreign countries, ranging in size from initial public offerings to Fortune 100 companies. Founded in 1971 and headquartered in New York, AST provides clients with customized solutions to fit their specific needs along with access to the best systems, services, processes and products available today — around the globe.

### Project Background

#### **CLIENT ISSUE:**

AST needed a single resource for all aspects relating to the sale and transfer of restricted and control securities. Specifically, AST had several different sources of information, but nothing that could clearly explain what needed to be done. This was exacerbated by the use of language that was overly complicated.

#### **RESULTS:**

Buck worked with AST to create a guide that was designed similarly to a current series of AST guides and that provides AST with a single source of information on Restricted and Control Securities.

The comprehensive guide includes the following elements:

- Introduction
- Definitions of the different types of securities and legends upfront
- Overview of the Process
- Requirements for Sale or Transfer
- Special Executive and Employee Considerations
- Reference Guide
- Samples
- FAQs
- Glossary

The guide, available as a bound booklet as well as an electronic pdf, was well-received at the EAC Industry Conference in the Fall of 2014.

**GUIDING YOUR PATH TO SUCCESS**

**AST'S GUIDE TO THE SALE AND  
TRANSFER OF RESTRICTED AND  
CONTROL SECURITIES**



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## INTRODUCTION



At American Stock Transfer & Trust Company, LLC (AST), we understand the challenges and difficulties that you and your shareholders may face when dealing with restricted or control securities. As your transfer agent, we partner with you to ensure all shareholder transactions are handled in a timely and accurate manner and in full compliance with applicable U.S. securities law.

We have created this guide as a single resource for all aspects relating to the sale and transfer of restricted or control securities. The guide outlines the following:

- The main **types of restrictions** that may apply to securities; and
- The **requirements for the sale or transfer** of each type of restricted security.

Our goal is to provide you with peace of mind and the reassurance that our proven process will guide you through the steps successfully.

As the requirements for removing any restrictive legend that appear on restricted securities are highly technical, we also provide step-by-step instructions and sample documents to explain the process. In the back, you will find a list of frequently asked questions (FAQs) and glossary of terms used throughout this guide.

If your restriction is related to an initial public offering (IPO), please also reference our *IPO Services: AST's Guide to Going Public*.

finally  
a single source for all your needs

## Restricted and Control Securities

Restricted securities are securities acquired in unregistered, private sales from an issuer or an individual identified as an affiliate of the issuer. Generally speaking, an affiliate is a person who has controlling influence with the issuer — such as an executive officer, a director or large shareholder.

Control securities are those held by an affiliate of the issuer. If a shareholder obtains securities from a controlling individual as described above who has been identified as an affiliate, the securities will be considered to be restricted securities, even if such securities were not otherwise restricted.

There are several types of restricted securities. Below is the list of common restricted securities that we handle as your transfer agent:

- **Private Placement.** Securities acquired either directly or indirectly from the issuer or an affiliate of the issuer in a nonpublic transaction.
- **Accredited Investors or Compensatory Benefit.** Securities acquired from the issuer subject to the resale limitations of the Securities Act of 1933 (the “Securities Act”) Rule 502(d) or Rule 701(c).

- **Qualified Institutional Buyers.** Securities acquired in a Rule 144A transaction.
- **Stock-for-Stock Merger.** Securities acquired by certain persons in a Rule 145 transaction.
- **Shareholder Agreements or Lockup Agreements.** Securities subject to contractual restrictions entered in connection with underwritten securities offerings.

## Restrictive Legends

A restrictive legend is a notice stamped on securities indicating that the securities are restricted to prevent unauthorized transfers. Under the Securities Act, issuers are required to take steps to prevent distribution to the public of securities that are neither registered under the Securities Act nor exempt from such registration requirement.

**Restrictions on the transfer of registered securities may also be imposed by:**

- The issuer’s articles of incorporation or bylaws; or
- An agreement between the issuer and the shareholder.

At the direction of the issuer, a restrictive legend is placed on physical stock certificates or book-entry accounts representing restricted securities.

**There are three main types of restrictive legends:**

1. **Standard Legend (“33 Act” Legend).** Indicates the securities have not been registered under the Securities Act and may not be resold in the marketplace unless they are registered under the Securities Act or are exempt from such registration.
2. **Affiliate Legend.** Indicates a restriction in place with an affiliate who is in a position to influence the actions of a corporation (including director, executives and large shareowners).

3. **Lockup Legend.** Indicates a legal contract is in place (often in the case of an initial public offering) that prohibits individuals from selling any shares of stock for a specified period of time.

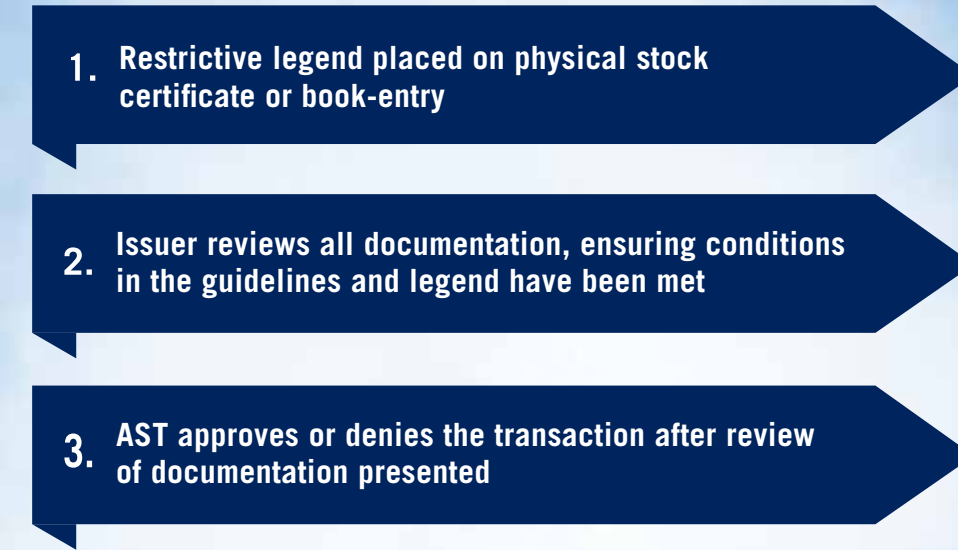
Depending on the type of restriction, requirements for lifting the legend may change. Please review the “Requirements” section on page 4 for more information.

## An Overview of the Process

AST’s process is designed to ensure that the restriction period is proactively maintained and lifted with utmost accuracy from a transactional and compliance standpoint.

As your “gatekeeper,” an AST Restricted Stock Specialist will assist you to prevent the removal of restrictions without proper documentation. Further, when the restrictions are lifted from your shares, AST will coordinate with you to ensure that the shares will be available for transfer by your shareholders.

The chart below outlines our process for removing a legend from a restricted security.



gatekeeper  
— for precision and accuracy



## Requirements for Sale or Transfer

To sell or transfer restricted or control securities, the guidelines and conditions of the legend and standard transfer requirements must be met. Before AST will process a sale or transfer, the issuer's legal counsel must receive and review the legend, legal opinion letter, letter of instruction or similar documents. Only the issuer's legal counsel may authorize the removal of legends.

### Legal Opinion Letter

Legal opinion letters are required for the removal of standard and affiliate restrictive legends. The legal opinion letters must fulfill the requirements listed below:

- Addressed to AST. Under certain limited circumstances, a letter authorizing reliance on an opinion delivered to a third party may be acceptable.
- Written by legal counsel to the issuer (internal or external), unless AST receives written approval from an authorized officer of the issuer to accept a legal opinion letter from the shareholder's counsel.
- Dated no earlier than 30 days prior to securities being presented to AST.
- Identify the shares that will be transferred by providing the registered shareholder's name, the certificate number or book-entry position (as applicable) and the number of shares represented.
- State the legal basis for removal of the legend (e.g., Form S-3, Rule 144, Rule 145, etc.).
- No assumption of any facts, legal conclusions or other matters necessary to permit reliance upon the

stated securities law exemption (e.g., the registered shareholder is not an affiliate of the issuer).

- Does not require AST to verify the occurrence of any event or action as a condition to the removal of the legend (e.g., removal of the legend must not be conditioned on AST's receipt of a seller's representation letter or confirmation of a sale).
- Conclude that the shares are freely transferable and may be transferred without a restrictive legend. The letter should also authorize and instruct AST to transfer such shares without a restrictive legend.
- Relate to a current transfer of shares.

If the number of shares being transferred is less than the full number of shares, then the opinion must contain instructions whether the non-transferred shares will remain subject to the restrictive legend. In addition, the issuer's legal counsel must approve the legal opinion prior to acceptance by AST.

### Blanket Legal Opinion

AST may accept a "blanket" opinion letter to release restrictions on multiple securities to be presented to AST over time. This blanket opinion letter must fulfill the requirements previously identified in the "Legal Opinions" section as well as the following additional requirements:

- Include an alphabetical listing of the covered registered holders, the certificate number or book-entry position (as applicable) and the number of shares represented.
- Must authorize and instruct AST to transfer the shares without a restrictive legend upon presentation for transfer of the shares covered by the opinion.
- Must state that AST is authorized to rely on the opinion until receipt by the issuer's legal counsel of written notice to the contrary.

Blanket opinions will be maintained on file until AST is notified otherwise by the issuer or its legal counsel.

### Letter of Instruction

A letter of instruction is required for the removal of affiliate and lockup restrictive legends. All letters of instruction must be approved by the issuer's legal counsel prior to acceptance by AST and must include the following:

- Signature of the issuer's corporate secretary or another authorized officer (but it cannot be the shareholder whose shares are being transferred).
- The registered shareholder's name, the certificate number or book-entry position (as applicable) and the number of shares represented.

The letter of instruction may not require AST to verify the occurrence of any event or action as a condition to the removal of the legend.

# guidance

giving you peace of mind

## Sale or Transfer of Restricted Securities

### Removal of Restrictive Legend without Transfer

Securities are not considered restricted if the requirements of Rule 144(b)(1) are met. When this occurs, securities may be sold or transferred by the shareholder.

A shareholder can also request to have the legend removed, regardless of whether he/she wants to transfer or sell his/her shares. In this case, AST must receive an opinion letter from the issuer's legal counsel satisfying the requirements outlined in the "Legal Opinion Letter" and "Blanket Legal Opinion" sections of this guide.

### Non-Sales: Transferring Restricted Securities

In certain circumstances, restricted securities may be transferred but still require a restrictive legend. For example, a shareholder of restricted securities may transfer them as a gift prior to the expiration of the holding period (Rule 144(d)). When this happens, the transferee will take the shares — subject to the same restrictions as the transferor. Another example is if restricted shares are transferred to a trust or held by an estate. AST may process these transfers upon receipt of a legal opinion from the issuer's legal counsel that describes the transaction.

In each of these examples, the restrictive legend will remain on the shares unless the issuer's counsel provides a legal opinion letter. The letter must contain the reason why the recipient of the shares is entitled to receive the shares unrestricted (i.e., with the legends removed).

### When a Restricted Security Will Be Rejected

Transfers of restricted securities will be rejected if AST does not receive the required documentation. Specifically, if a broker or a shareholder provides shares, but does not have all of the required documentation, it will be rejected.

If AST receives an incomplete transfer package, a notification will be sent to the presenter within five (5) business days.

It is important to note that all presentations to AST, whether by a broker or a shareholder, should be delivered directly to AST's Restricted Securities Department with all required documentation or they will be rejected.

### Releasing Lockup Legends Prior to Expiration

To process lockup legends efficiently, the following documents are needed prior to expiration:

- **A legal opinion letter from the issuer's legal counsel.** Please also review the "Legal Opinion Letter" section for more information about what should be included in this letter.
- **Excel spreadsheet indicating which restrictions are being removed.** An AST Relationship Manager will provide the issuing company or its legal counsel with an Excel spreadsheet listing all the restricted accounts. If only lockup legends are being removed, but other legends are still applicable, then the shares will remain restricted and no shares can be moved until AST receives a legal opinion letter specific to that shareholder (or through another blanket release) allowing the removal of all restrictions applicable to the shares held.
- **Additional release letters** are required for any securities that are not released by a blanket release.

The legal opinion letter and Excel file should be received by AST's Relationship Manager 48 hours prior to expiration. After the restriction(s) are lifted, the shareholder is then able to have the shares moved out of the account via Direct Registration System (DRS) Profile.

### Post Lockup Conversion Process

For the broker to be able to move the shares via DRS Profile, the shareholder will need to provide the broker with their AST account information:

- **Direct Registration Book-Entry Advice.** When files are loaded into our system, AST performs a mailing that includes a statement that gives shareholders their AST account number. When the restrictions are removed and shares are eligible for transfer, a broker may require a copy of this statement to move the shares to the shareholder's brokerage account.

## Executive and Employee Considerations Under Rule 144

Certain forms are legally required by the SEC to be filed when officers and directors of companies execute stock transactions. Below is a list of the most common required filings:

- **Form 3.** Displays ownership totals for a new officer, director, or 10% or more owner.
- **Form 4.** States the changes to an insider's holdings when they occur. This form is used for purchases, sales, exercise of options, disposition by gift, or any other transaction that changes the amount of shares held by the insider.
- **Form 5.** Annual recap of all events reported on Form 4.

In addition to the reporting requirements to the SEC, there are also "sales requirements" that dictate how the transactions have to be handled by the broker when executing on behalf of "insiders."

### Other Considerations

Executives and other insiders must know how to dispose of shares in a legal manner. In today's heightened regulatory environment, corporate officers have to ensure their transactions are legal and made without insider information. To address this issue, the SEC has adopted Rule 10b5-1 which gives insiders a vehicle to buy and sell securities without fear of securities fraud charges when used properly.

### Additional Services Offered Through AST

AST offers expanded services through its affiliate, AST Investor Services, a registered broker dealer, to assist with the sale or transfer of securities. With this added resource, AST is able to service issuers and shareholders throughout their entire lifecycle.

If you would like more information about executive and employee considerations or how our affiliates may assist you, please contact your Relationship Manager, and they will direct you to our experts.

AST Investor Services LLC, Member FINRA and SIPC

## A Quick Reference Guide

The table below summarizes the key things to keep in mind when it comes to the sale or transfer of restricted securities:

TYPE OF RESTRICTED SECURITY	DEFINITION
Private Placement	Securities acquired directly or indirectly from the issuer or from an affiliate of the issuer in a nonpublic transaction.
Accredited Investors or Compensatory Benefit	Securities acquired from the issuer subject to the resale limitations of Securities Act Rule 502(d) or Rule 701(c).
Qualified Institutional Buyers	Securities acquired in a Rule 144A transaction.
Stock-for-Stock Merger	Securities acquired by certain persons in a Rule 145 transaction.
Shareholder Agreements or Lockup Agreements	Securities subject to contractual restrictions entered in connection with underwritten securities offerings.

A summary of the types of Restricted Legends that can be applied to the above and how to deal with them:

TYPE OF LEGEND	DESCRIPTION	HOW TO REMOVE IT (PLEASE SEE DETAILS IN THE RELEVANT SECTIONS OF THIS DOCUMENT.)
Standard	Also referred to as "33 Act" legend, this legend indicates the securities have not been registered under the Securities Act and may not be resold in the marketplace unless they are registered under the Securities Act or are exempt from such registration.	A legal opinion letter needs to be provided.
Affiliate	This legend indicates a restriction is in place with an affiliate who is in a position to influence the actions of a corporation (including directors, executives and large shareowners).	A legal opinion letter is required when shares are to be sold while still an affiliate.  An authorization letter from the company is required when the holder has not been an affiliate for 90 days and shares have been held for less than one year.
Lockup	This legend indicates a legal contract is in place (often in the case of an initial public offering) that prohibits individuals from selling any shares of stock for a specified period of time.	Authorization letter from the issuer.

## Sample: Direct Registration Book-Entry Advice

American Stock Transfer & Trust Company, LLC  
 Operations Center  
 6201 15th Avenue  
 Brooklyn, NY 11219  
 Phone: 800-937-5449  
 www.amstock.com

Statement Date:  
 Company Number:  
 Company Name:  
  
 CUSIP Number:  
 Shareholder Account Number:

### DIRECT REGISTRATION TRANSACTION INFORMATION

Transaction Type:	<b>Book Shares Credited</b>	Broker/Dealer Participant Number on File:
Number of Shares:		Broker/Dealer Participant Number on File:
Transaction Number:		Broker/Dealer Participant Number on File:

### ACCOUNT SUMMARY

Current Balances	
DRS Book-Entry Shares:	
Certificated Shares:	
Dividend Reinvestment Shares:	
Total Shares:	

This statement is your record of shares that have been credited to your account in book-entry form with American Stock Transfer & Trust Company, LLC (AST), the transfer agent for this issue.

You may request a physical certificate at any time if offered by the company.

If you wish to open a brokerage account and transfer your shares you can do this through AST Investor Services, an affiliate of American Stock Transfer. AST Investor Services is a participant in the Direct Registration System (DRS) Profile. To learn more, please visit [www.astinvestor.com](http://www.astinvestor.com) or contact an AST Investor Services representative via email at [customerservice@astinvestor.com](mailto:customerservice@astinvestor.com).

If you currently have a brokerage account and wish to transfer your book-entry shares to that account, the following options are available to you:

- If your broker is a participant in the DRS Profile system, your broker may request your shares from AST utilizing the automated Profile system. You must provide your broker with the Company's CUSIP number, your shareholder account number, your taxpayer identification number (TIN), and the name in which the shares are registered. You must also provide your broker with the number of shares that you wish to transfer. Please be advised that your broker may request that you send him/her a copy of this Direct Registration Statement.
- If your broker is not a participant in the DRS Profile system, please write to AST at the address listed above, instructing AST to credit your brokerage account. You must include your AST account number, the name of your brokerage institution, your brokerage account number, and the number of shares that you wish to transfer. Your letter of instruction must be signed by all owners listed in the account registration and the signatures must be guaranteed by a bank, broker or other financial institution that is a member of a Securities Transfer Association-approved medallion program such as STAMP, SEMP or MSP. It would speed processing if you would include a copy of this Direct Registration Statement. Please coordinate with your broker to ensure that they will accept share delivery via the Direct Registration system.

The issuer will furnish, without charge, to each holder who so requests, the powers, designations, preferences and relative participating options or other special rights of each class of security or series thereof, and the qualifications, limitations, or restrictions of such preferences and/or rights.

**The shares represented by this advice bear restrictions on transfer.**



## Sample: IPO Letter to Stockholders

COMPANY LOGO

DATE

TO STOCKHOLDERS OF COMPANY NAME

**RE: INITIAL PUBLIC OFFERING**

**Dear Stockholder:**

On April 10, 2014, COMPANY NAME (the “Company”) priced an initial public offering (“IPO”) of shares of its common stock, which closed on DATE. Prior to the IPO, the Company’s board of directors and stockholders approved for a X-for-XX.XXXX reverse stock split of all of the outstanding shares of common stock of the Company, which also resulted in a proportional adjustment to the existing conversion ratios for each series of Preferred Stock outstanding prior to the close of the IPO. As a result of these actions, all stock certificates previously issued by the Company were voided and cancelled, and all shares were recorded in electronic, book-entry form (i.e., uncertificated shares). If you have in your possession a Company stock certificate, please note that it does not represent any currently outstanding shares of the Company and, consequently, you should not deposit any such certificate with your broker. If you find any outstanding stock certificates in your possession, please return the certificates to the attention of FIRST NAME LAST NAME, ADDRESS 1, ADDRESS 2, CITY, STATE ZIP CODE.

The Company’s stock transfer agent, American Stock Transfer & Trust Company, LLC (“AST”), has created a stockholder account for each stockholder and has credited each account with such stockholder’s stock as registered on the Company’s books as of the IPO. A Direct Registration Book-Entry Advice from AST indicating the number of shares credited to your stockholder account is enclosed.

All fully-vested book-entry shares have restrictions and include legends confirming the same. You may request to have such restrictive legends removed if applicable criteria for removal have been satisfied. Following removal of the restrictive legends, the Direct Registration System (“DRS”) may be accessed by your broker and your shares can be transferred to your brokerage account. Please refer to the attached list of Frequently Asked Questions that address topics regarding DRS.

**Upon the expiration of the IPO lock-up period, which continues through DATE,** our attorneys will instruct AST to remove the restrictive legend relating to the lock-up period. Please keep in mind that any other restrictive legends remaining on your book-entry shares must be removed before your shares can be electronically transferred to your broker.

## Sample: IPO Letter to Stockholders, continued

### AST Information

To communicate or access your account with AST, the following methods are available:

#### Online Account Access:

Step 1: Log onto AST’s website at <https://www.amstock.com/main>

Step 2: Click on Shareholder Account Access under the Shareholder Services section

Step 3: Enter your account number, which is on the transaction statement enclosed

Step 4: Enter your social security or tax identification number

#### Online Assistance:

If you need assistance, click the Contact Us link and a live customer service representative can be reached via the Live Help button.

#### Telephone:

Toll-free: (800) 937-5449

Worldwide: (718) 921-8124

Customer service representatives are available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**Email:** [info@amstock.com](mailto:info@amstock.com)

#### Mail:

American Stock Transfer & Trust Company, LLC

Attention: Shareholder Services

6201 15th Avenue

Brooklyn, NY 11219

**Please note that you will need to supply your tax identification number, account number (see transaction statement enclosed) and contact information, including address, when communicating with AST.**

If you have any questions, please do not hesitate to contact FIRST NAME LAST NAME by phone at PHONE NUMBER or by email at EMAIL ADDRESS.

Sincerely,

COMPANY NAME

By: \_\_\_\_\_

FIRST NAME LAST NAME

TITLE, DEPARTMENT



## FREQUENTLY ASKED QUESTIONS (FAQs) AND GLOSSARY

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### Frequently Asked Questions (FAQs)

#### What is an affiliate?

An affiliate is a person such as an executive officer, director or large shareholder in a relationship of control with the issuer.

#### What are restricted securities?

Restricted securities are securities acquired in unregistered, private sales from the issuing company or from an affiliate of the issuer. Investors typically receive restricted securities through private placement offerings, Regulation D offerings, employee stock benefit plans, as compensation for professional services, or in exchange for providing “seed money” or start-up capital to the company. Rule 144(a)(3) identifies what sales produce restricted securities.

If you acquire restrictive securities, you will receive the shares in either book-entry form with restriction or as a certificate stamped with a restrictive legend. The legend indicates that the securities may not be resold in the marketplace unless they are registered with the SEC or are exempt from the registration requirements.

#### What are control securities?

Control securities are those held by an affiliate of the issuing company. Control means the power to direct the management and policies of the company in question, whether through the ownership of voting securities, by contract, or otherwise. If you buy securities from a controlling person or “affiliate,” you take restricted securities, even if they were not restricted in the affiliate’s hands.

Unlike restrictive securities, certificates for control securities usually are not stamped with a legend.

#### What is Rule 144 with respect to selling restricted and control securities?

When you acquire restricted securities or hold control securities, you must file an exemption from the SEC’s registration requirements to sell them in a public marketplace. Rule 144 allows public resale of restricted and control securities if a number of conditions are met. The questions below will tell you what you need to know about selling your restricted or control securities. They will also describe how to have a restrictive legend removed.

#### What are the conditions of Rule 144?

You have the ability to sell your restricted or control securities to the public as long as you can meet the applicable conditions set forth in Rule 144. The rule is

not the exclusive means for selling restricted or control securities, but provides a “safe harbor” exemption to sellers. The rule’s five conditions are summarized below:

#### 1. Holding Period.

Before you may sell any restricted securities in the marketplace, you must hold them for a certain period of time.

- If the company that issued the securities is a “reporting company,” in that it is subject to the reporting requirements of the Securities Exchange Act of 1934, then you must hold the securities for at least six months.
- If the issuer of the securities is not subject to the reporting requirements, then you must hold the securities for at least one year.

The relevant holding period begins when the securities were bought and fully paid for. The holding period only applies to restricted securities. Because securities acquired in the public market are not restricted, there is no holding period for an affiliate who purchases securities of the issuer in the marketplace. However, the resale of an affiliate’s shares as control securities is subject to the other conditions of the Rule.

Additional securities purchased from the issuer do not affect the holding period of previously purchased securities of the same class. If you purchased restricted securities from another non-affiliate, you can tack on that non-affiliate’s holding period to your holding period. For gifts made by an affiliate, the holding period begins when the affiliate acquired the securities and not on the date of the gift. In the case of a stock option, including employee stock options, the holding period begins on the date the option is exercised and not the date it is granted.

#### 2. Current Public Information.

There must be adequate current information about the issuing company publicly available before the sale can be made. For reporting companies, this generally means that the companies have complied with the periodic reporting requirements of the Securities Exchange Act of 1934. For non-reporting companies, this means that certain company information, including information regarding the nature of its business, the identity of its officers and directors and its financial statements, if publicly available.

#### 3. Trading Volume Formula.

If you are an affiliate, the number of equity securities you may sell during any three-month period cannot exceed the

greater of 1% of the outstanding shares of the same class being sold or if the class is listed on a stock exchange, the greater of 1% or the average reported weekly trading volume during the four weeks preceding the filing of a notice of sale on Form 144. Over-the-counter stocks, including those quoted on the OTC Bulletin Board and the Pink Sheets, can only be sold using the 1% measurement.

#### 4. Ordinary Brokerage Transactions.

If you are an affiliate, the sales must be handled in all respects as routine trading transactions, and brokers may not receive more than a normal commission. Neither the seller nor the broker can solicit orders to buy the securities.

#### 5. Filing a Notice of Proposed Sale with the SEC.

If you are an affiliate, you must file a notice with the SEC on Form 144 if the sale involves more than 5,000 shares or the aggregate dollar amount is greater than \$50,000 in any three-month period. The sale must take place within three months of filing the notice, and if the securities have not been sold, you must file an amended notice.

#### If I am not an affiliate of the issuer, what conditions must I comply with for Rule 144?

If you are not (and have not been for at least three months) an affiliate of the company issuing the securities and have held the restricted securities for at least one year, you can sell the securities without regard to the conditions in Rule 144 discussed above. If the issuer of the securities is subject to the Exchange Act reporting requirements and you have held the securities for at least six months but less than one year, you may sell the securities as long as you satisfy the current public information condition.

#### Can the securities be sold publicly if the conditions of Rule 144 have been met?

Even if the conditions of Rule 144 have been met, the restricted securities cannot be sold to the public until the legend has been removed from the shares. Only a transfer agent can remove a restrictive legend. However, the transfer agent will not remove the legend unless consent of the issuer has been obtained — usually in the form of an opinion letter from the issuer's counsel — that the restrictive legend can be removed. Unless this happens, the transfer agent does not have the authority to remove the legend and permit execution of the trade in the marketplace.

To begin the legend removal process, an investor should contact the company that issued the securities or the transfer agent for the securities to ask about the

procedures for removing a legend. Removing the legend can be a complicated process requiring you to work with an attorney who specializes in securities law.

#### What if a dispute arises over whether I can remove the legend?

If a dispute arises about whether a restrictive legend can be removed, the SEC will not intervene. Removal of a legend is a matter solely in the discretion of the issuer of the securities. State law, not federal law, covers disputes about the removal of legends. Thus, the SEC will not take action in any decision or dispute about removing a restrictive legend.

## Glossary

**Accredited Investor.** Describes investors permitted to invest in certain types of higher risk investments including seed money, limited partnerships, hedge funds, private placements and angel investor networks. The term generally includes wealthy individuals and organizations such as banks, insurance companies, significant charities, some corporations, endowments and retirement plans.

- In the United States, for an individual to be considered an accredited investor, he or she must have a net worth of at least one million U.S. Dollars (not including the value of one's primary residence) or have income at least \$200,000 each year for the past two years (or \$300,000 together with his or her spouse if married) and have the expectation to make the same amount this year (U.S. Securities and Exchange Commission on Accredited Investors).
- In Canada, the same prerequisites apply, however one's net worth must be a minimum of one million dollars not including the value of the principal residence.

**Affiliated Person (Affiliate).** Individual who is in a position to influence the actions of a corporation (includes directors, executives and owners).

**Blanket Opinion.** Authorization from company counsel to remove legend(s) for multiple shareholders (typically kept on file for an elongated period of time).

**Direct Registration System (DRS) Profile.** A system that allows securities to be held in "book-entry" form without having a physical certificate issued as evidence of ownership. Instead, securities are held and registered electronically.

**Form 3.** A document that must be filed with the SEC by an insider affiliated with a public company's operation or

by any investor owning 10% or more of the company's outstanding shares.

**Form 4.** A document that must be filed with the SEC whenever there is a material change in the holdings of company insiders. Insiders required to submit a Form 4 include directors and officers of the company as well as any shareholders owning 10% or more of the company's outstanding stock.

**Form 5.** A document that must be filed with the SEC by an insider who has conducted insider transactions during the year which were not previously reported via a Form 4 submission.

**Form S-1.** Initial registration form for new securities required by the SEC for public companies. Any security that meets the criteria must have an S-1 filing before shares can be listed on a national exchange.

Form S-1 requires companies to provide information on the planned use of capital proceeds, detail the current business model and competition, as well as provide a brief prospectus of the planned security itself, offering price methodology and any dilution that will occur to other listed securities. The SEC also requires the disclosure of any material business dealings between the company and its directors and outside counsel.

Form S-1 is also known as the "Registration Statement Under the Securities Exchange Act of 1933." Shares must be sold through a broker accompanied by a prospectus sale letter. Legend cannot be removed without a sale.

**Form S-3.** Simplified security registration form from the SEC open to use by companies that have met prior reporting requirements. The Form S-3 registers securities under the Securities Act of 1933 for companies that are based in the United States only.

Companies seeking to use the S-3 must have met all reporting requirements listed under sections 12 or 15(d) of the Securities Exchange Act of 1934, which assumes that the company seeking registration already has some form of security filed with the SEC.

The filing of a Form S-3 may occur in advance of an IPO of common stock.

Form S-3 is also known as the "Registration Statement Under the Securities Exchange Act of 1933." Shares being sold pursuant to an S-3 registration must be accompanied by a Broker Representation Letter stating that the shares are being sold pursuant to the delivery of the company's prospectus. In the event that shares are not being sold, the request must be accompanied by an opinion of counsel.

**Form S-8.** A filing with the SEC that is used by a publically traded company to register securities that will be offered to its employees via benefit or incentive plans. A company must file this form with the SEC when it issues stock or stock options to its own employees. The form details the terms of the issues.

Form S-8, is also known as the "Registration Statement under the Securities Exchange Act of 1933" to be offered to employees pursuant to certain plans. The Securities Exchange Act of 1933, often referred to as the "truth in securities" law, requires that these registration forms providing essential facts are filed to disclose important information upon registration of a company's securities. This helps the SEC achieve the objectives of this act — requiring investors to receive significant information regarding securities offered and to prohibit fraud in the sale of the offered securities.

It is also a type of registration statement that the company uses to register their stock-for-stock options and employee plans. When a client is requesting an original issuance of shares due to an exercise of option, they will refer to their S-8 filing when requesting unrestricted shares.

**IPO Lockup Legend.** Most IPOs feature share lockup agreements, which prohibit insiders and other pre-IPO shareholders from selling any of their shares for a specific period. The typical lockup usually lasts for 180 days but can be as short as 90 days. The purpose of an IPO lockup period is to prevent the market from being flooded with a large number of shares that would depress the stock price.

The SEC does not require companies that are going public to have a lockup period. Rather, the lockup period is something the companies themselves and/or the investment banks underwriting the IPO request to keep the stock price up. When a lockup period ends, which is referred to as the lockup expiration, insiders are free to sell their shares.

**Legal Opinion Letter.** An analytical letter from legal counsel, which addresses a specific legal question (e.g., whether the proposed transaction satisfies the requirements of Rule 144 is a legal question). These letters serve as protection for association leaders and should be considered a viable risk management device. Legal opinion letters should always be provided by a practicing attorney (in most circumstances should be outside counsel).

**Lockup Agreement.** Legally binding contract between the underwriters and insiders of a company prohibiting these individuals from selling any shares of stock for a specified period of time. Lockup periods typically last 180 days but can on occasion last for as little as 120 days or as long as one year.

**Private Investment in Public Equity (PIPE) Deal.**

Authorization letter from the company telling AST that the shares that need to have the restriction removed were issued in a PIPE deal.

**Qualified Institutional Investor and Qualified Institutional Buyer (QIB).** Institutional investor allowed to privately place securities with other institutional investors without registering the trade with the SEC. This requires that:

- The private placement will be for investment purposes and not for resale to the general public; and
- It also requires that the institutional investors have at least \$100 million under management.

**Regulation S.** SEC regulation allowing publicly-traded companies not to register stocks sold outside the United States to foreign investors. Created in 1990, this regulation was intended to encourage foreign investors to purchase American stocks to increase the liquidity of American markets.

**Reliance Letter.** Company authorization letter to accept third-party opinions.

**Restricted Stock.** Stock that must be traded in compliance with special SEC regulations concerning its purchase and resale. These restrictions generally result from affiliate ownership, mergers and acquisitions activity and underwriting activity.

Many firms are now using restricted stock as a reward for employees. The advantages to restricted stock are that employees:

- May get dividends;
- Usually get voting rights; and
- Receive value even if the stock price drops over the vesting period.

**Rule 10b5-1.** A rule established by the SEC that allows insiders of publicly traded corporations to set up a trading plan for selling stocks they own. Rule 10b5-1 allows major holders to sell a predetermined number of shares at a predetermined time. 10b5-1 plans are used by many corporate executives in an attempt to avoid accusations of insider trading.

**Rule 144.** SEC rule that sets the conditions under which restricted, unregistered and control securities can be sold. There are the five conditions that must be met for these securities to be sold:

1. The prescribed holding period must be met.
2. There is an “adequate” amount of current information available to the public regarding the historical performance of the security.

3. The amount to be sold is less than 1% of the shares outstanding and accounts for less than 1% of the average of the previous four weeks’ trading volume.

4. All of the normal trading conditions that apply to any trade have been met.

5. The seller must file a form with the SEC before the sale if they wish to sell more than 500 shares or an amount worth more than \$10,000.

**Rule 144(a).** Administrative rule under the SEC allowing, under certain circumstances, for qualified institutional investors to trade certain securities with other institutional investors without registering the trade with the SEC. The rule requires that the private placement be for investment purposes and not for resale to the general public. These securities are traded on the NASDAQ Portal Market; only NASDAQ members who are qualified institutional investors have access to it. Some firms may trade under Rule 144A as a prelude to an IPO.

**Rule 144(b).** Not an affiliate of the company, have held shares for over a year and requesting to have the legend removed. An opinion of counsel is required along with Rule 144 paperwork.

**Rule 144(b)(1).** Sets forth the conditions under which a non-affiliate, who is not selling on behalf of an affiliate, may sell restricted securities.

**Rule 144(d).** Restricted securities cannot be resold under Rule 144 until the security holder has satisfied the applicable holding period.

**Rule 145.** SEC rule allowing the sale of certain securities without first registering the securities with the SEC. Specifically, stocks an investor has acquired as the result of a merger, acquisition or reclassification do not need to be registered prior to sale.

**Rule 502(d).** Contains the general conditions that must be met to take advantage of the exemptions under Regulation D. Generally speaking, these conditions are (1) that all sales within a certain time period that are part of the same Reg D offering must be “integrated”, meaning they must be treated as one offering, (2) information and disclosures must be provided, (3) there must be no “general solicitation” and (4) that the securities being sold contain restrictions on their resale.

**Rule 701(c).** Refers to the transactions exempted by the Rule as offers and sales “under a written compensatory benefit plan (or written compensation contract).”



timely, accurate  
and in full compliance



## RESTRICTED AND CONTROL SECURITIES

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