

## Securities Act Rules

### QUESTIONS AND ANSWERS OF GENERAL APPLICABILITY

#### Section 138. Rule 144A - Private Resales of Securities to Institutions

##### Question 138.05

**Question:** When determining its status as a qualified institutional buyer under Rule 144A, may an entity include securities that it purchased and continued to hold on margin in calculating whether it meets the \$100 million threshold under Rule 144A(a)(1)(i)?

**Answer:** Yes. The fact that securities were purchased or are held on margin does not mean they are not owned by the entity. Therefore, the securities may be included in calculating whether the entity meets the threshold, so long as they are not subject to a repurchase agreement. See Rule 144A(a)(2). [December 8, 2016]

##### Question 138.06

**Question:** When determining its status as a qualified institutional buyer under Rule 144A, may an entity include securities that it owns but has loaned out to borrowers of securities in calculating whether it meets the \$100 million threshold under Rule 144A(a)(1)(i)?

**Answer:** Yes. The fact that the entity may lend out securities does not mean they are not owned by the entity and thus may be included in calculating whether it meets the threshold. [December 8, 2016]

##### Question 138.07

**Question:** When determining its status as a qualified institutional buyer under Rule 144A, may an entity include securities that it has borrowed in calculating whether it meets the \$100 million threshold under Rule 144A(a)(1)(i)?

**Answer:** No. Borrowed securities are not owned by the entity and thus may not be included in calculating whether it meets the threshold. [December 8, 2016]

##### Question 138.08

**Question:** When determining its status as a qualified institutional buyer under Rule 144A, may an entity include short positions in securities that it has established in calculating whether it meets the \$100 million threshold under Rule 144A(a)(1)(i)?

**Answer:** No. Short positions do not represent ownership of securities but rather sales of securities and thus may not be included in calculating whether the entity meets the threshold. [December 8, 2016]

##### Question 138.09

**Question:** An investment company that is not registered under the Investment Company Act of 1940 is part of a family of funds, some of which may or may not be registered

investment companies. When determining its status as a qualified institutional buyer under Rule 144A, may the non-registered investment company aggregate investments by the other funds that are part of the family in the manner described under Rule 144A(a)(1)(iv)?

**Answer:** No, only registered investment companies may use the aggregation method permitted under Rule 144A(a)(1)(iv). [December 8, 2016]

#### Question 138.10

**Question:** When determining its status as a qualified institutional buyer under Rule 144A, Rule 144A(a)(1)(v) provides that an entity will be deemed a qualified institutional buyer if all of its equity owners are qualified institutional buyers. Who are the equity owners of a limited partnership for purposes of Rule 144(a)(1)(v)?

**Answer:** The limited partners are the equity owners of a limited partnership. The general partner, unless that person is also a limited partner, need not be considered in determining whether a limited partnership is a qualified institutional buyer for purposes of Rule 144(a)(1)(v). See also [Securities Act Rule CDI 255.18](#). [December 8, 2016]