



## SEC Proposes Amendments to Registration Requirements

In December 2014, the SEC proposed amendments to revise the rules related to the thresholds for registration, termination of registration, and suspension of reporting under Section 12(g) of the Exchange Act. These proposals are designed to implement the requirements of the JOBS Act. The proposing release can be found at the following link: <http://www.sec.gov/rules/proposed/2014/33-9693.pdf>.

### Registration Requirements

The JOBS Act revised Section 12(g) of the Exchange Act to increase the threshold at which an issuer is required to register its equity securities. Under the revised threshold, most issuers must register a class of equity securities if it has more than \$10 million of total assets and the securities are “held of record” by either (a) 2,000 persons or (b) 500 persons who are not accredited investors.<sup>1</sup>

The accredited investor determination would be made as of the last day of the fiscal year, and not at the time of the sale of the securities. As a result, an issuer would need to determine, based upon the facts and circumstances, whether it can rely upon prior information furnished by an investor to form a reasonable basis for believing that a shareholder remains an accredited investor. Accordingly, in connection with the proposed rules, the SEC is soliciting comments on the appropriate criteria to be used by issuers to confirm the extent to which their shareholders are “accredited investors,” and the extent to which an appropriate safe harbor can be developed.

Depending in part upon the terms of any safe harbor, private companies may find it useful to retain a transfer agent or other service provider to assist in monitoring their shareholders, and determining their status as accredited investors. Of course, this would be an unexpected, and probably unintended, cost imposed on issuers by the new regulatory scheme.

### Banks and Bank Holding Companies

After giving effect to the JOBS Act and the new regulations, an issuer that is a bank or bank holding company will be required to register if it has more than \$10 million of total assets and the equity securities are “held of record” by 2,000 or more persons. In addition, the JOBS Act increased the threshold at which a bank or a bank holding

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<sup>1</sup> We note that the SEC’s proposed Rule 12g-6 under the Exchange Act would exempt holders of securities issued in crowdfunding offerings that are exempt from SEC registration from counting towards the holders of record threshold. Subsequent transferees of these securities would also be excluded. In contrast, securities issued under proposed “Regulation A+” would count towards the limit; the SEC solicited comments in its December 2013 proposing release as to whether an exemption or suspension from Section 12(g) of the Exchange Act is appropriate for these securities.

company may terminate or suspend the registration of a class of securities under the Exchange Act from 300 to 1,200 persons.

The SEC's proposed rules would amend the rules to treat savings and loan holding companies in a manner that is similar to banks and bank holding companies as to registration, termination of registration, or suspension of the Exchange Act reporting requirements. The SEC estimates that approximately 125 savings and loan holding companies were reporting issuers as of June 30, 2014, and that approximately 90 of these companies would be eligible to terminate registration under the new threshold.

### Securities Held of Record

The JOBS Act also directed the SEC to revise the definition of "held of record" to exclude securities that are held by persons who received the securities under an "employee compensation plan" in transactions that were exempt from registration, and to create a safe harbor that issuers can use in making that determination. The proposed non-exclusive safe harbor would rely on the current definition of "compensatory benefit plan" in SEC Rule 701, and the conditions in Rule 701(c). Issuers would be permitted to exclude securities (A) held by persons who received them under an employee compensation plan in transactions exempt from the registration requirements of the Securities Act or that did not involve a "sale" within the meaning of the Securities Act or (B) held by persons who received them in exchange for securities received under an employee compensation plan. The safe harbor would depend only on the transaction conditions of Rule 701(c); in contrast, Rule 701's issuer eligibility, volume limitations and disclosure conditions would not apply.

### Comment Period

The proposed rules will be subject to a 60-day comment period.

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