



WILL THE JOBS ACT RESULT IN REDUCING THE COST TO RAISE CAPITAL FOR BANKS AND BANK HOLDING COMPANIES?

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Shumaker Williams, P.C. Financial Services Department

[Jane G. Davis](#), [Paul A. Adams](#), [Evan C. Pappas](#)

Both the U. S. Senate and the House of Representatives have passed the Jumpstart Our Business Startups (“JOBS”) Act, and President Obama signed it into law on April 5, 2012. The JOBS Act contains a provision that community banks have long desired – an increase in the number of shareholders that a bank or a bank holding company can have before it is required to register its shares with the Securities and Exchange Commission. Prior to the JOBS Act, that number was 500; the JOBS Act increases that threshold to 2,000. This change will provide community banks and holding companies who have been concerned about the possibility of triggering the registration requirement, with its attendant expense and ongoing reporting obligations, with much more flexibility in terms of their capital raising activities. The provisions for banking and bank holding companies are more favorable than the relief provided to other corporations.

Once a bank or bank holding company has been required to register with the SEC, the Securities Exchange Act of 1934 provided that it could only deregister if the number of its shareholders fell below 300. The JOBS Act also increases that number - to 1,200. Banks and bank holding companies with fewer than 1,200 shareholders and which are not listed on a national stock exchange, such as the NYSE or NASDAQ, will be able to deregister their shares by filing a form with the SEC. Once the form is filed, the bank’s or bank holding company’s obligation to file reports with the SEC is suspended. Any bank or bank holding company that wishes to remain listed on a national exchange however, must remain registered since the Exchange Act requires listed companies to

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be registered, irrespective of the number of shareholders they have. A bank or bank holding company that decides it does not wish to remain listed would both delist and deregister, filing two forms with the SEC.

On April 11th, the SEC issued staff interim guidance that a bank holding company that qualifies as of April 5, 2011 to suspend its reporting obligations or deregister its shares may do so by filing the Form 15 along with an explanatory note. In addition, those bank holding companies that, but for the JOBS Act, would be required to register their shares because of their shareholder base exceeding 500 shareholders and which had a fiscal year end between January 1, 2012 and April 4, 2012 are now not required to register their shares as long as the number of shareholders is less than 2,000 as of April 5, 2012.

It should be noted, that the reporting obligations of a deregistered bank or bank holding company are not terminated, but only suspended. If the number of shareholders goes over 1,200 at any point in the future, the reporting obligations are resurrected. During the amendment process, the attempt to overturn the current treatment for counting the number of shareholders to include beneficial ownership was defeated. Congress rejected that approach and further reduced the method of counting shareholders by not including securities held by persons who received them through an employee compensation plan exempted from registration requirements.

[Shumaker Williams, P.C.](#) welcomes calls from current and prospective clients with any questions related to the Jobs Act or any financial institution related matters.

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