



JOB Act: Bank and Bank Holding Company Deregistration

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One of the most significant changes the JOBS Act made for bank and bank holding companies is that now bank and bank holding companies will be able to deregister and exit the SEC reporting system and eliminate many of the associated obligations and costs if they have fewer than 1,200 shareholders of record. Under prior law, banks and bank holding companies needed fewer than 300 shareholders of record to deregister. While this amendment became effective April 5, 2012 and the steps to deregister are fairly simple, the process will take companies that are traded on the over-the-counter markets at least 90 days and NASDAQ or NYSE listed companies at least 110 days. The process could be shortened by SEC regulations that are to be adopted pursuant to the JOBS Act, but the SEC has one year to promulgate these regulations. The longer time frame for NASDAQ or NYSE listed companies is because such companies first will have to delist from NASDAQ or the NYSE in order to deregister and exit the SEC reporting regime. Companies that have effective registration statements (e.g., Forms S-1, S-3 or S-8) and have not issued securities (including through the exercise of stock options) under them in 2012 will have to obtain no-action relief from the SEC if they want to deregister in 2012, but this process should not cause a timing delay. Companies that have issued securities pursuant to an effective registration statement or that have taken a registration statement effective in 2012 will not be able to exit the SEC reporting system until after they file their Form 10-K for the 2012 fiscal year.

While each institution will have its unique considerations, the benefits of deregistering could include cost savings from legal, accounting and filing expenses, reallocation of management efforts from SEC compliance, simplified corporate governance considerations, and reduced liability under securities laws. In addition, bank and bank holding companies also should consider the possible negative impact of deregistering, which includes the fact that some shareholders and analysts may view deregistration negatively; the potential impact on your ability to raise capital, have dividend reinvestment plans, and incentivize employees with stock incentive plans; the marketability and liquidity of your common stock; and the ability of insiders to resell.

Banks or bank holding companies interested in deregistering should consider the potential benefits and adverse effects applicable to their own institution in making that determination.

For more information about this topic, please contact the authors or any member of the Williams Mullen Securities & Corporate Governance team.

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