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Securities and Exchange Commission
100 F St. NW
Washington, DC 20549-9303
Rule-comments@sec.gov

Re: Changes to Exchange Act Registration Requirements to Implement Title V and Title VI of the JOBS Act

File S7-12-14

Dear Securities and Exchange Commission:

Here are my comments on the proposed changes:

Summary

- The JOBS Act requires the SEC to revisit the definition of shareholder "held of record."
- The increasing use of street name has led to a steady decline in the measured number of shareholders "of record." The median reported number of shareholders "of record" of U.S. exchange-listed companies has fallen from 3,300 in 1975 to 541 in 2013. SEC registration will soon be voluntary for the majority of publicly traded companies in the U.S.
- The old rationale for not counting beneficial shareholders as shareholders "of record" for the purpose of determining whether an issuer must register with the SEC is no longer valid. The

JOBS Act effectively requires examination of accreditation status at the beneficial shareholder level.

- The SEC should clarify its definition of shareholders of record to include all beneficial shareholders for registration threshold purposes. This can easily be measured and enforced using the proxy count of voting materials sent to shareholders.
- To comply with the spirit of Congressional intent and avoid an unanticipated increase in the number of firms required to register, the SEC should exercise its broad exemptive authority and provide a conditional safe harbor exemption from registration for issuers with a proxy count less than 2,000 beneficial shareholders.
- This safe harbor exemption should be conditional upon compliance with a set of best practices to insure adequate disclosure and corporate governance.
- Accreditation determination should be kept as simple as possible to comply with the spirit of the law to reduce compliance burdens. Surveying shareholders through the proxy voting process is a simple solution.

Background

Titles V and VI of the JOBS Act contain several provisions relating to the number of shareholders "of record" needed in order for an issuer to be required to register with the SEC. Congress in 2012 attempted to reduce the regulatory burden on smaller companies by setting the numerical threshold for SEC registration to 500 unaccredited shareholders or 2,000 total shareholders (§501), and by excluding shares issued through crowdfunding (§303) and employee share ownership programs (§502).[1] Different thresholds were set for banks. The SEC has been directed accordingly (§503) to revise the definition of shareholder "of record."

Yet at the same time Congress expressed concern about the ability of the SEC to enforce the registration threshold by requiring that the SEC study whether new enforcement tools are needed (§504). Congress has also re-iterated the 300 shareholder cutoff for issuers to deregister (§601).

Two years later, the SEC has issued a set of proposed rules that attempt to follow the letter of the Congressional mandate, but still miss important parts of the spirit. The spirit of the law is clearly to reduce the regulatory burden for smaller companies by raising the threshold of accredited investors for registration, while continuing to protect the most vulnerable non-accredited investors.

[1] It also makes sense to examine ways to reduce compliance costs on SEC registrants while still maintaining consumer protection, rather than just make it easier for companies to avoid SEC registration altogether.

Unfortunately, this rulemaking ignores Congress' stated concern in §504 regarding enforcement. The Commission should use this rulemaking to address Congress' legitimate concerns by modernizing the definition of shareholders "of record" to clarify that records of shareholders holding shares held in street name are, albeit indirectly, maintained on behalf of the issuers, and such shareholders should be counted as shareholders of record for purposes of the registration threshold.

The statutory distinction between accredited and unaccredited investors requires that the Commission look beyond nominees.

Congress has spoken. It clearly wants the SEC to distinguish between accredited and unaccredited investors. It wants the unaccredited investors protected. It also wants to remove costly burdens from issuers with an investor base of sophisticated accredited investors, who presumably can look out for themselves. Congress realized that this distinction required the SEC to change its definition of shareholders held "of record" but wisely left it up to the SEC to figure out how to do it.

Traditionally, the number of shareholders "of record" consisted of those shareholders directly registered with the issuer (e.g. holding archaic paper certificates or participating in a direct registration system). Shares held beneficially in street name were not counted. The nominee (typically Cede and Co. for shares held at DTC) is often counted as a single shareholder of record.[2] Neither the statute nor the proposal is very clear on how to count shares held through nominees.

This is an extremely important issue, as there are approximately 16,000 companies that are not SEC registrants but whose shares are publicly traded in the OTC market.[3] These companies often have large numbers of beneficial shareholders who own the shares in "street name" and thus are not counted as shareholders "of record." The SEC needs to address the issues raised by these non-reporting public companies in a way that 1) does not unduly increase their compliance costs, while 2) providing a clear

[2] Although the SEC staff report "Report on Authority to Enforce Exchange Act Rule 12g5-1 and Subsection (b)(3)" http://www.sec.gov/news/studies/2012/authority-to-enforce-rule-12g5-1.pdf asserts on page 11 that each participant of DTC is counted as a separate holder, in practice many issuers count DTC/Cede as a single issuer, as is the case in several of the examples given in Appendix 2.

[3] OTC Markets reports 7,408 securities in its OTC Pink segment and 8,675 in its Other OTC segment as of March 1, 2015.

means to determine which of these companies have so much investor activity that the public interest requires SEC registration, and 3) does not provide perverse incentives for these non-reporting companies to become opaque and mistreat their public shareholders.

Suppose an issuer has 1,000 beneficial shareholders. Of these 1,000 shareholders, 400 of them are accredited and 600 are unaccredited. They all hold their shares in street name. On the books of the company, all of the shares are held by Cede and Co. The proposal is not clear on how to deal with a situation like this. The proposal in places rightly requires looking through the nominee to the beneficial shareholders. For example, the proposed definition 230.405 reads (**emphasis added**):

> B. If, after reasonable inquiry, the issuer is unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, the issuer may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.
>
> *C.* ***Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to the issuer*** *or filed publicly and based on information otherwise provided to the issuer.*

The old method of counting only shareholders "of record" made sense in the 1960s.

When Congress first passed Section 12(g) of the Exchange Act in 1964, computers were in their infancy. Our securities markets ran on paper certificates, and were well on their way to the "paperwork" crisis later in the decade. The Securities Investor Protection Corporation (SIPC), which made it safer for investors to hold securities in street name, would not arrive until 1970. Similarly, Depository Trust Corporation ("DTC"), which is now the shareholder "of record" for most publicly held shares in the United States would not even come into existence until 1973. Consequently, most shareholders held their securities as physical certificates.[4]

[4] The SEC Staff reports that in 1964, only 23.7% of shares were held in nominee or street name. Currently, over 85% of shares are held in nominee or street name. See "Report on Authority to Enforce Exchange Act Rule 12g5-1 and Subsection (b)(3)," **footnote** 26.

Thus, when the Commission first attempted to define shareholders "of record" in the 1960s, it made sense to count only shareholders directly registered with the company (e.g. holding paper certificates) because most shareholders held their stock that way. Shares held in "street name" were likely held by short-term speculative traders with high turnover. It would have been enormously costly to attempt to count the relatively small fraction of long-term shareholders who held their stocks in street name in their brokerage accounts.

The old rationale for ignoring beneficial holders no longer holds.

The traditional method in Rule 12(g) of counting only shares directly registered with the company made sense in the ancient pre-computer days. It would have been too expensive to track down the beneficial shareholders behind the nominees. However, now that issuers must make "reasonable inquiry" to look through nominees to determine the accreditation status of the investors, there is no longer any cost saving from using the old definition.

Today, the majority of shares are generally held in street name through DTC. DTC's nominee name of Cede & Co is generally counted as only one shareholder of record, regardless of how many hundreds or thousands of beneficial owners are holding their shares indirectly through DTC. This results in many large companies having a relatively small number of shareholders "of record." Appendix 2 contains several examples of such firms.

However, the number of beneficial shareholders of these exchange-listed firms is undoubtedly much higher. NYSE and NASDAQ listing standards generally require at least 400 total or public shareholders, not just shareholders of record.[5] As issuers apparently have little trouble counting the total number of beneficial shareholders for purposes of exchange listing, they should have little trouble counting them for the purposes of SEC registration thresholds.

[5] Nasdaq Rule 5450(a)(1)(2) requires at least 400 "Total Holders" for continued listing on the Global Select Market for primary equities. Nasdaq Rule 5550(a) requires at least 300 "Public Holders" for continued listing of primary equities. Rule 5555 requires 100 public holders for preferred continued listing. NYSE Rule 802.1(a) requires the "total number of stockholders" to be at least 400. The NYSE explicitly counts the number of beneficial shareholders.

There are many, many, more examples. A look at the Compustat database reveals 425 NYSE-listed issuers and 712 NASDAQ-listed issuers with less than 300 shareholders.[6] As the threshold for deregistration is 300 shareholders "of record," this implies that a large number of issuers could deregister from the SEC if they wanted.[7]

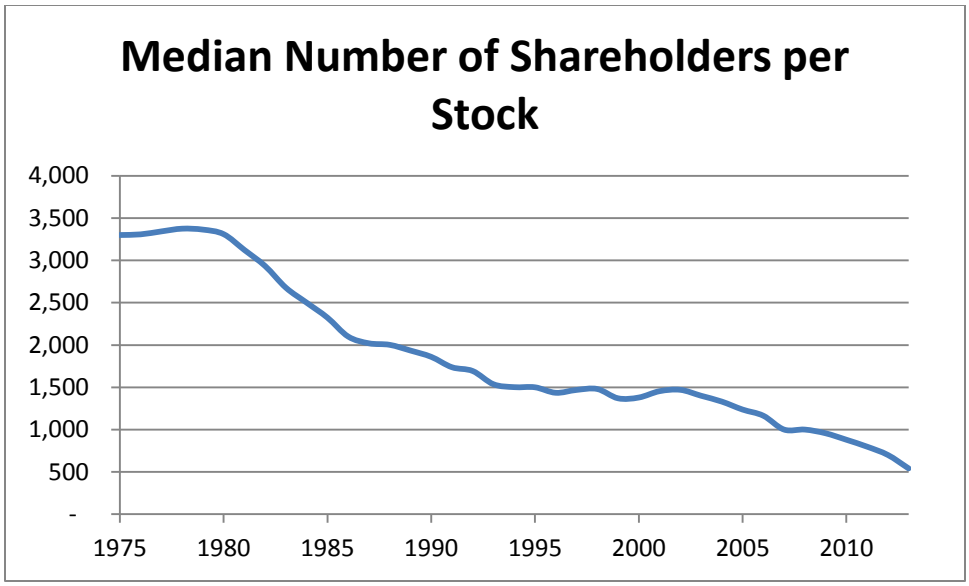
The number of shareholders "of record" has been shrinking steadily.

The reported number of shareholders "of record" has been shrinking steadily. The following chart depicts the median number of reported shareholders of record for US exchange-listed domestic companies from 1975 through 2013 obtained from Compustat data.[8] In 1975, the median U.S. company reported 3,300 shareholders "of record." By 2013, this number had shrunk to 541. This represents a compounded shrinkage rate of approximately 4.65% per year. At this rate of decline, by 2050 the median company would have less than 100 shareholders "of record." SEC registration will become totally voluntary for even the largest public companies.

[6] As of April 29, 2014, accessed via WRDS. The CSHR field on Compustat generally records the number of shareholders of record as listed in Item 5 of Form 10-K. As the CSHR field is blank for many firms in the database, the number of issuers that could claim to have less than 300 shareholders "of record" is undoubtedly higher.

[7] Section 12(g) of the '34 Act generally permits the termination of registration if the issuer certifies that "… the number of holders of record of such class of security is reduced to less than 300 persons." Likewise, section 15(d) generally permits the suspension of filing requirements when the number of shareholders held of record is less than 300 persons, or 1200 for a bank or bank holding company. Exchange listing requirements require firms to be registered with the SEC, so firms wishing to deregister would also have to delist from the exchanges.

[8] Compustat data accessed via WRDS January 7, 2015.



The SEC has the power and the duty to fix this.

The SEC has explicit authority under Section 12g of the Exchange Act to define the term "held of record." It also has explicit authority under Section 12h of the Exchange Act to exempt issuers "upon such terms and conditions and for such period as it deems necessary or appropriate." In short, the SEC has the clear mandate and authority to use its discretion to figure out the most appropriate solution necessary and appropriate for the public interest or for the protection of investors.

The SEC should clarify the definition of shareholders "of record" to include beneficial holders held in street name in the total count.

Clearly, something has to be done. The current definition of shareholder of record in Rule 12g5-1 counts "each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer." Street name ownership records are indeed maintained on behalf of the issuer,

albeit indirectly.[9] The SEC should clarify its definition shareholder of record to specifically include those shareholders who hold their shares in street name. Exchange-listed companies already count their total number of shareholders for purposes of exchange listing, so it would not be excessively burdensome to do so.

The number of shareholders can easily be estimated using the number of voting materials that issuers pay to transmit to shareholders.

One good approximation for the number of beneficial shareholders is the number of voting materials that issuers pay to transmit to their shareholders. Currently, issuers pay to have brokerage firms transmit proxy materials to the beneficial shareholders, and they are billed for these services based on the number of shareholders serviced.[10] The number paid for (which I will refer to as "the proxy count") is an easy number for an issuer (and SEC enforcement staff) to examine to determine whether an issuer is subject to registration requirements under the '34 Act.

Using the estimated number of beneficial shareholders based on the "proxy count" will greatly simplify determination of compliance for issuers and regulators alike. It will also alleviate the problems brought about by changing technology that have drastically reduced the number of shareholders of record under the old method of counting.

Using the proxy count is consistent with Congressional intent in the JOBS Act.

Congress expressed clear concern about whether changing technology has made enforcement of the registration thresholds problematic. As demonstrated above, the shrinking number of shareholders "of record" essentially makes SEC registration completely voluntary for the vast majority of publicly traded

[9] The Law Dictionary (http://thelawdictionary.org/on-behalf-of/) defines "on behalf of" as "acting in the place of someone else." Clearly, brokers are acting in the place of issuers in maintaining records of security holders for the purpose of disseminating shareholder communications and collecting proxy voting instructions.

[10] Broadridge Shareholder Services transmits voting materials and collects voting instructions for the overwhelming majority of shares held in street name in a well-oiled process. A few brokerage firms do it themselves or use another firm such as Mediant Communications.

companies. By using the proxy count to determine the number of shareholders "of record," the SEC can fulfill Congressional intent to require registration of companies with a large enough public interest.

The registration thresholds using the modernized proxy count definition should be increased to avoid a sudden jump in the number of companies required to register.

Modernizing the method of counting shareholders will increase the measured number of shareholders for many issuers with street name shareholders. This could result in an unintended increase in the number of issuers subject to registration requirements under the '34 Act. However, the intent of Congress in the JOBS Act appears to be to increase the registration threshold for accredited, but not unaccredited investors, which remains at the old 500 shareholder "of record" count.

To avoid an unintended increase in the number of issuers required to register with the SEC, the SEC should use its broad exemptive authority to create a safe harbor for firms with a proxy count of less than, say, 2,000 shareholders under the new and more accurate method of counting.[11] However, this safe harbor should be conditional on appropriate disclosure and corporate governance practices which will be described in more detail below.

Using the proxy count for safe harbor determination simplifies the problem of determining the accreditation status of investors.

One problem with implementing the JOBS Act distinction between accredited and unaccredited investors is that many retail brokerage firms do not maintain updated records on the accredited status of their customers. Even if the retail brokerage firms collect such information on account opening as part of their

[11] Here is how the 2,000 number was derived. I took a random sample of 100 domestic U.S. exchange-listed firms from Compustat. I then obtained the proxy count for 98 of those firms, which had a median proxy count of 13,403. I used medians because the long-tailed nature of the distribution makes means unstable. Given the median number of reported shareholders of record of 541, this implies approximately 13,403/541 = 24.77 beneficial owners per shareholder of record. Note that the ratio of the median number of shareholders of record in 1975 to 2013 is 3,300/541 = 6.10. If one assumes for the sake of argument that 500 shareholders "of record" was the right number in 1975, then 500/6.10 would be the comparable number today, or 81.97 shareholders of record as a threshold for registration. Multiplying the threshold of 81.97 times 24.77 proxy count per beneficial shareholder gives 2,031.

"know your customer" procedures, the information regarding accreditation status is often voluntary and not verified. Such information is also generally not updated regularly. Thus issuers with shares held in street name will have difficulty in determining the accreditation status of their investors. A safe harbor based on the proxy count will simplify the problem of determining compliance for issuers as well as for the SEC enforcement staff. Issuers with a proxy count under the threshold would not need to bear the compliance costs of regularly determining the accreditation status of the shareholder base.

Using the SEC's exemptive authority to exempt all issuers with a proxy count less than 2,000 is clearly in line with Congress' intent to reduce burdens on smaller issuers. This would allow the issuers to avoid the administrative costs of determining the accreditation status of their investors. Issuers with a proxy count above 2,000 could use the proxy process to survey their shareholder base for a further determination of the accredited/unaccredited mix of their shareholder base.

The Commission is correct to be concerned about disclosure.

The Commission specifically requests comment on:

> *2. The higher registration and reporting thresholds could result in issuers having a significant number of shareholders with freely tradable shares who lack current disclosure information about the issuer. How would investors get the information they need in connection with purchases and sales? What investor protection issues are raised when these security holders engage in secondary market transactions and how might they be addressed?*

The Commission is absolutely right to be concerned about this situation. It is a sad fact of life that there are many companies with publicly quoted stock and public investors that refuse to provide adequate, let alone any, public information needed for investors to make purchase or sale decisions. This history of abusive shareholder suppression is the primary reason for disclosure rules in the first place.

The SEC should enforce insider trading laws in all securities.

One method for increasing disclosure in unregistered securities is for the SEC to actively enforce insider trading laws in all securities, even those traded OTC. There is nothing in §10b of the '34 Act or SEC Rule 10b-5 that is restricted only to the securities of SEC registrants. Indeed, §10b explicitly includes securities not registered on exchanges. Rule 10b-5 clearly states "any security." This means that it applies to securities issued by non-registrants as well. If a non-registrant is totally opaque, then virtually any transaction by an officer or employee with the public market could be in violation because the public has none of the information available to the insiders. In order for the insiders to trade lawfully, such issuers must disclose adequate information to the public. A series of well-publicized speeches by SEC officials, followed up with some serious and well-publicized enforcement actions, should get the point across.

Provide a safe harbor from registration requirements for firms that follow a set of best practices in disclosure.

Enforcement is an expensive and messy process. A better solution is to provide incentives for non-registrants to comply with a series of best practices in disclosure. For example, the SEC could provide a safe harbor that conditionally exempts smaller firms from registration as long as they comply with those best practices. The SEC has broad rulemaking powers. Notwithstanding some recent court reversals, I believe the Commission still enjoys enough *Chevron* deference that would allow reasonable rules to pass judicial muster, especially if the rules were simple, common sense, and inexpensive to comply with.

The safe harbor should be conditional upon fair treatment of shareholders and securities law compliance.

The shareholders in non-reporting companies still require consumer protection. The federal securities laws with respect to fraud, manipulation, and insider trading still apply. History shows that without legal

protection, public shareholders can be badly mistreated.[12] This is the whole reason our securities laws exist in the first place. State regulation is also grossly inadequate to protect the public shareholders in companies that claim exemption from SEC registration. It is a safe bet to say that the overwhelming majority of the 4,000+ publicly traded non-registrants in the OTC markets have shareholders in dozens, if not all 50, states.

It is a sad fact of life that some lawyers advise non SEC-registered issuers to adopt a "scorched earth" policy of providing no public information to the market, despite a large number of public shareholders and publicly quoted stock. The perverse logic behind this stonewalling approach is the fear that, if the company treats its shareholders fairly, it might end up with more shareholders, which would push the company over the registration threshold, resulting in costly compliance burdens. Thus, in order to avoid the cost of registration, such companies mistreat their remaining public shareholders. This is one of the perverse unintended consequences of the current rules.

§36 of the '34 Act allows for conditional exemptions. Likewise, §303 of the JOBS Act also permits conditionality in the exemption of crowdfunded shares. Such exemptions from registration should be based on issuer compliance with the securities laws and adhering to a set of cost-effective best practices for smaller issuers.

This safe harbor would provide a strong incentive for smaller issuers to treat their shareholders fairly.

The SEC should promulgate a series of voluntary best practices for unregistered companies with public shareholders.

The SEC should promulgate a series of best practices for investor protection for public investors in unregistered companies. Adherence to these practices would provide a safe harbor against various Commission enforcement activities. For example, if the company promptly releases material information to the general public, its officers, directors, and employees will be able to buy or sell shares with less fear of engaging in unlawful insider trading.

[12] See, for example, the sad saga (SEC File 81-939) of the preferred shareholders of W2007 Grace Acquisition I (OTC: WGCBP and WGCCP) who bought preferred shares in an NYSE-listed REIT and ended up with illiquid shares in a dark company. http://www.sec.gov/comments/81-939/81-939.shtml

These best practices would include:

1. The company posts regular financial results on its web site in a timely manner and leaves them up for at least five years. The public financial statement should be audited, if audited financial statements are available. If not, the company need not spend the money on a professional audit, but must post copies of its tax returns. Tax returns are even more credible than audited financial statements, as companies are highly unlikely to exaggerate profitability to the IRS.

2. Important company information is promptly disseminated through postings on the company web site or social media such as Twitter. Anything that would merit an 8-K filing for a larger company should be either tweeted, Facebooked, or emailed to a distribution list of interested investors and posted on the web site, such as a link to the Twitter or Facebook page.

3. The company takes no steps to inhibit the public market for the shares. If the shares are quoted in the OTC market, the company takes the appropriate steps to make the shares DTC eligible.[13]

4. The company will provide size-appropriate investor relations activities for its shareholders, including appropriate answers to reasonable questions about the company's business. Stonewalling investor questions as a matter of policy is not permitted.

5. The company will have a policy preventing officers, directors, affiliates and employees from engaging in improper insider trading in the company stock.

6. The company will provide adequate information to shareholders regarding the background and qualifications of candidates for the board of directors.

7. The company will follow standard good corporate governance practices.

[13] Shares that are "DTC eligible" can be transferred electronically through the regular U.S. settlement process. Shares that are not DTC eligible generally must be transferred through paper certificates, an archaic and expensive process.

Keep accreditation determination simple.

The JOBS Act effectively requires an examination of the shareholder base to count the number of accredited and non-accredited shareholders to determine whether an issuer must register with the SEC. Examining the shareholder base in the 1960s would have been an expensive, manual process. In the modern computerized world, it is much easier. The industry has developed a smooth process for distributing voting materials and collecting shareholder votes. Most brokerage firms hire Broadridge to distribute the voting materials and collect the votes from both the Objecting Beneficial Owners (OBOs) and the Non-Objecting Beneficial Owners (NOBOs).[14] This infrastructure can easily be used by issuers to communicate with all of their beneficial shareholders and inquire as to their accreditation status.

Accreditation determination can be done with a simple question on voting instruction forms.

Indeed, issuers could simply add a question regarding accreditation status to the voting instruction form that is sent at each election to the beneficial shareholders. This would make the marginal cost of counting the total number of shareholders and determining their accreditation status virtually negligible. It is my understanding that Broadridge charges little or nothing for an additional ballot question, so the only additional costs would be preparing a slightly longer proxy statement to explain the ballot item. The vote tabulator can provide the total number of beneficial shareholders who were contacted, along with the results of the accreditation question.

Perfect precision is not required.

One issue that arises in accreditation determination is what level of documentation is necessary. In situations like this where the investor is already a shareholder, there is no high pressure sales or purchase environment that would lead to pressure to falsify the response. Thus, taking investors at their word is sufficient.

Another issue is what to do about investors who do not respond to inquiries regarding accreditation. Many investors closely guard their financial privacy. Furthermore, many retail investors choose not to

[14] OBOs are shareholders who object to their brokerage firms' sharing of their contact information with the issuers. This is an important but controversial piece of financial privacy. NOBOs permit their brokers to share contact information with issuers.

vote in routine corporate elections. There are two possibilities: One would be to assume that all non-respondents are unaccredited. This would be highly inaccurate.

The second would be to assume that non-respondents are similar to respondents with respect to their accreditation status. Consider the following example, an issuer has 1,000 shareholders, and 500 respond: 400 (80%) accredited and 100 (20%) unaccredited. The issuer would then estimate that the 500 nonrespondents are also 80% accredited and 20% unaccredited, for a total estimate of 800 accredited and 200 unaccredited investors.

While no method is perfect, this provides a reasonable estimate. It is highly doubtful that the costs of forcing numerous small issuers to go to great expense to provide more precise or better documented results are worth the benefits of a more precise determination of whether the issuer must register. This is especially true if the issuers are already providing adequate public disclosure to the investing public.

The whole point of the JOBS Act is to reduce costly burdens on capital formation. In this spirit, issuers should be able to determine their status with respect to the 2,000 accredited/ 500 unaccredited shareholder threshold in the simplest and most cost effective way possible. Unless an accredited investor has suffered an extreme financial reversal, it is likely that they will continue to be accredited in future years. Even if a few of the accredited investors drop below the threshold, it is likely that some of the unaccredited investors will rise above, thus making it unlikely that an issuer‘s status will change from year to year unless there is a large change in the shareholder base. Thus, the proposed annual determination is unnecessary regulatory overkill.

Some issuers do have changes in their shareholder base, such as the thousands of publicly traded OTC companies. In these situations, using the proxy voting process would be a simple and effective solution.

Respectfully submitted,

James J. Angel, Ph.D., CFA

Appendix One:

§ 240.12g5-1 Definition of securities “held of record”.

(a) For the purpose of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be “held of record” by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer, subject to the following:

(1) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Securities held by two or more persons as coowners shall be included as held by one person.

(5) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the issuer can establish that, if such securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of persons.

(6) Securities registered in substantially similar names where the issuer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(b) Notwithstanding paragraph (a) of this section:

(1) Securities held, to the knowledge of the issuer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities: *Provided, however,* That the issuer may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or evidences of interest.

(2) Whole or fractional securities issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution for the sole purpose of qualifying a borrower for membership in the issuer, and which are to be redeemed or repurchased by the issuer when the borrower's loan is terminated, shall not be included as held of record by any person.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

Appendix Two: Examples of companies with small numbers of shareholders "of record."

NYSE-listed Boise Cascade (NYSE:BCC), a company with a market capitalization of over $1 billion, reports only two stockholders of record in its 10-K:

> "On February 26, 2014, there were 39,365,350 shares of our common stock outstanding, held by two stockholders of record, one of which was Cede & Co., which is the nominee of shares held through The Depository Trust Company, and the other of which is BC Holdings."[15]

They are not the only one. Antero Resources (NYSE:AR) also reports only two shareholders of record.

> "We have one class of common shares outstanding, our par value $0.01 per share Common Stock ("Common Stock"). Our Common Stock is traded on the New York Stock Exchange under the symbol "AR". On February 20, 2014, our Common Stock was held by 2 holders of record. The number of holders does not include the shareholders for whom shares are held in a "nominee" or "street" name. " [16]

Likewise, Interactive Brokers (NASDAQ: IBKR) reports five in its 10-K:

> On February 20, 2014, there were five holders of record, which does not reflect those shares held beneficially or those shares held in "street" name. Accordingly, the number of beneficial owners of our common stock exceeds this number." [17]

Swift Transportation Co (NYSE:SWFT) reports:

> "On December 31, 2013, there were eight holders of record of our Class A common stock and three holders of record of our Class B common stock. Because many of our shares of Class A common stock are held by brokers or other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by the record holders."[18]

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[15] http://www.sec.gov/Archives/edgar/data/1328581/000132858114000010/bcc1231201310-k.htm#sD2AE18798387B288257BAEAB4FF0C13F

[16] http://www.sec.gov/Archives/edgar/data/1433270/000104746914001424/a2218464z10-k.htm#do15304_item_5._market_for_registrant___ite04666

[17] Interactive Brokers 10K, page 40, http://www.sec.gov/Archives/edgar/data/1381197/000104746914001697/a2218588z10-k.htm#de74301_item_5._market_for_registrant___ite04681

[18] http://www.sec.gov/Archives/edgar/data/1492691/000149269114000013/swft-12312013x10k.htm#s28615b0516384fc39c05a6a18b719608

NYSE Imperial Holdings Inc. (NYSE:IFT) reports

> "As of February 28, 2014, we had 10 holders of record of our common stock."[19]

[19] http://www.sec.gov/Archives/edgar/data/1494448/000119312514091791/d654315d10k.htm#toc654315_7