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December 13, 2005

Gerald LaPorte, Esq.
Chief
Office of Small Business Policy
Securities and Exchange Commission
100 F St., N.E.
Washington, D.C. 20549

Re: Preliminary Recommendations of Corporate Governance and Disclosure
Subcommittee

Dear Mr. LaPorte:

I am writing to you, on behalf of the American Bankers Association (“ABA”),¹ regarding a preliminary recommendation of the Corporate Governance Disclosure Subcommittee (“Subcommittee”) that, among other things, would: (i) interpret “held of record” under Section 12(g) of the Securities Exchange Act of 1934 (“Exchange Act”) to mean beneficial holders; (ii) increase the threshold under Section 12(g) requiring registration under the Exchange Act from \$10 million in assets and 500 security holders to \$15 million in total assets and 1,000 security holders, and (iii) amend the threshold under Section 15(d) of the Exchange Act permitting deregistration from 300 to 750 security holders. The Subcommittee recommends that its proposal be adopted with a reasonable phase-in period, so as not to unduly burden affected issuers, such as a 24-month period. For purposes of this letter, I am assuming that the Subcommittee is interpreting “beneficial owners” to mean equitable owners and not those persons who are deemed “beneficial owners,” under Rules 13d-3 and 14b-2, by virtue of having voting or investment authority over the securities.

As you will recall, the American Bankers Association first suggested in March of this year that the current 500 shareholder threshold should be raised to some number between 1,500 and 3,000. We made this suggestion because the shareholder number is the only meaningful Section 12(g) measure for the banking industry (as 99 percent of all banks have assets in excess of \$10 million). Banks have large dollar assets due to the fact that loans are considered assets, which, in turn, are leveraged liabilities of the bank, *i.e.*, deposits. Raising the \$10 million threshold to \$15 million, as the Subcommittee has recommended, will provide a negligible benefit for the industry as 97.5% of the banks have assets of \$15 million or more.

¹ The ABA, on behalf of the more than two million men and women who work in the nation’s banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country.

While we are appreciative of the Subcommittee's recommendation to raise the current 500 number to 1,000 and the concomitant deregistration threshold from 300 to 750, we did not recommend, however, that the current interpretation of "held of record" in Sections 12(g) and 15(d) be revised to mean "beneficial holders," rather than "record holder." Indeed, in subsequent communications with the Advisory Committee on Smaller Public Companies ("Advisory Committee"), we expressed our opposition to any such movement as it could in practice increase regulatory burden—the purpose of the subcommittee and its work—forcing into the periodic reporting system many banks that currently are not in the system. Such a result is contrary to the position the banking industry has advocated before the Securities and Exchange Commission and the Advisory Committee.

Recent discussions with our member banks have confirmed that many banks that currently are exempt from Exchange Act periodic reporting requirements because they have less than 500 record holders could be, were such a change of measurement to "beneficial holders" adopted, newly subjected to these reporting requirements. Preliminary feedback from our bankers reveals that in general the ratio of record to beneficial holders is approximately 1:4. Consequently, in order for companies that are not publicly traded under current Commission interpretations merely to maintain their current status, the beneficial owner number would have to be increased 2,000, and an even higher number would be needed to begin to provide some material regulatory relief for small banks struggling with existing regulatory burdens.

If the number is not raised by a factor exceeding the likely increases caused by changing the method of measurement, then even greater pressure will be exerted on these companies to reduce the number of shareholders either to avoid registration requirements or to de-register. As Daniel Blanton, President and CEO of Georgia Bank Financial Corporation, testified before the Advisory Committee:

We are reluctant to [de-register] because the Bank was founded on the belief that the Augusta [Georgia] area needed a locally owned and operated, relationship-based bank. Most of our shareholders live within our market and all but a few do some business with the bank. This localized ownership is quite common at community banks across the U.S. Often times, investing in the local bank is the only remaining investment members of a community can still make.

For those community banks that cannot reasonably go private due to a large shareholder base, many could be forced to merge with a larger partner in order to spread out the cost of compliance. Such regulatory-induced mergers cannot be wise public policy.

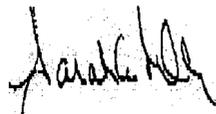
Moreover, there are serious practical problems with measuring shareholders by a "beneficial holder" standard. In general, it is not an easy matter for issuers to know how many beneficial holders of their stock that there actually are. Our members have informed us that the information they receive under shareholder communications rules is frequently confusing and incomplete. Under these rules, issuers, often using third parties, will inquire of banks and broker-dealers that hold the issuer's securities in nominee name regarding the number of sets of proxy materials each bank and broker-dealer will need to forward on to its customers for voting. From the number compiled, issuers can make reasonable estimates on how many sets of proxy materials are needed to send on to persons that vote or beneficially own the company's securities.

And the communications rules do not require precise count of the beneficial holders. Specifically, as Rule 14b-2 provides, the number supplied represents all owners that have voting authority. The number does not represent those equitable owners who have determined that voting authority should be exercised by their fiduciary agent, whether an individual or a corporate trustee. It is our understanding that a large percentage of bank fiduciary clients do choose to have their securities voted by the bank, individual trustees, or both. In these situations, the number provided to the issuer will not necessarily include the equitable owners on whose behalf the fiduciary is voting. In addition, the number provided frequently does not represent the number of downstream correspondent banks that hold securities in nominee name on behalf of their clients. It is not uncommon, in the banking industry, for one bank nominee to hold securities at the Depository Trust Company through an upstream correspondent bank.

Such estimates do not present material problems for providing proxy materials. Relying on such estimates, however, to determine compliance with Exchange Act periodic reporting are another altogether. Without precise measurement of beneficial ownership, relying upon it as a standard of measurement for registration requirements is unworkable and inappropriate, introducing a new source of regulatory risk for banks that they cannot easily resolve.

In closing, the American Bankers Association recognizes and appreciates the important work the Subcommittee and the Advisory Committee have accomplished since their formation earlier this year. We applaud and concur with the view that the threshold for registration (and de-registration) should be updated, and we appreciate and support many of their other important recommendations. We fear, however, that changing the standard of measurement of shareholder would not only undermine such progressive efforts at regulatory relief but actually introduce significant new elements of regulatory burden. We are, therefore, opposed for the reasons discussed above to changing the measure of a publicly traded company from record beneficial ownership,² and we urge you to share our views with the Advisory Committee members at tomorrow's meeting.

Sincerely yours,



Sarah A. Miller

cc: Chairman Christopher Cox
Commissioner Paul Atkins
Commissioner Roel Campos
Commissioner Cynthia Glassman
Commissioner Annette Nazareth
Director Alan Beller
Rusty Cloutier, President Mid-South Bank, N.A.

² Foreign private issuers have long complied with Section 12(g) by measuring their company's beneficial owners. We note that the Commission will consider tomorrow in an open meeting whether to revise Section 12(g) with respect to foreign private issuers. We respectfully suggest that any decision to continue to measure beneficial owners of foreign private issuers under Section 12(g) should not determine whether domestic issuers should be required to make to a similar measure.