that do not involve a sale under Section 2(a)(3) from the definition of "held of record" for purposes of determining an issuer's obligation to register a class of securities under the Exchange Act would be beneficial to issuers who rely on the "no sale" theory when making compensatory grants to certain employees. Excluding such "no sale" securities could reduce the number of holders of record of an issuer and potentially delay required Exchange Act reporting.

We are also proposing to establish a non-exclusive safe harbor that relies on Securities Act Rule 701(c) and the definition of "compensatory benefit plan" in that rule to assist issuers in making the determination of whether holders of securities received pursuant to an employee compensation plan may be excluded. We believe that relying on an existing definition that is already understood by market participants would make it easier for issuers to avail themselves of this safe harbor than if we proposed a new alternative definition. The proposed non-exclusive safe harbor relies upon the conditions in existing Rule 701(c). While generally broad in application, the conditions in Rule 701(c) provide limitations, such as requiring that securities be sold under a compensatory benefit plan, that the plan be written, that the plan be established by the issuer or certain specified related entities and that participation be limited to employees and certain other specified persons. Although we are unable to quantify the impact of proposing this safe harbor because we cannot measure the number of issuers that would rely on the safe harbor, we can qualitatively assess the proposed safe harbor's impact. A safe harbor that applies the familiar concepts of existing Rule 701(c) should create efficiencies in applying the safe harbor and avoid conflicts with existing rules, which should reduce costs more significantly for smaller issuers seeking to rely upon the proposed safe harbor.

Foreign private issuers would be able to rely on the proposed safe harbor when

making their determination of the number of U.S. resident holders under Exchange Act Rule 12g3-2(a). While we are unable to quantify the number of foreign private issuers that would be impacted, we acknowledge that it may allow some foreign private issuers to delay registering with and reporting to the Commission. The considerations about cost and benefit tradeoffs for foreign private issuers would be analogous to the ones discussed above for domestic issuers.

Use of the term "accredited investor" in Exchange Act Section 12(g)

Section 501 of the JOBS Act raises the threshold number of holders of record at which an issuer is required to register a class of equity securities under the Exchange Act to 2,000 persons or 500 persons who are not accredited investors. The provision was effective upon enactment of the JOBS Act. In order for an issuer to rely on the new, higher threshold established by the JOBS Act, the issuer will need to be able to make accredited investor determinations if it has more than 500 holders of record.

We propose that the definition of "accredited investor" as specified in Securities Act Rule 501(a) determined as of the last day of the fiscal year rather than at the time of sale of the securities apply when making determinations under Exchange Act Section 12(g)(1). Issuers are familiar with this definition, which should facilitate compliance. Developing an alternative definition for purposes of Section 12(g)(1) could impose costs on issuers by requiring them to familiarize themselves with, and apply, a new and different standard. We are unable to estimate how many issuers would be impacted by using the Rule 501(a) definition of "accredited investor" as compared to an alternative definition. We acknowledge that not providing specific guidance or rules on how to confirm a security holder's status as an accredited investor for purposes of determining holders of record could result in some uncertainty for issuers.

Some commenters have recommended that the Commission address potential compliance issues related to the accredited investor threshold by providing a safe harbor for determining accredited investor status.[100] We could, among other things, permit an issuer to rely on an annual affirmation of accredited investor status by the investor or rely on an ongoing basis on information regarding accredited investor status received by the issuer at the time the securities were initially issued to the investor or at the time the securities were most recently issued to the investor, or permit issuers to otherwise rely on information previously provided by an investor.

Addressing potential compliance issues relating to the use of "accredited investor" in Section 12(g) could increase efficiency by providing issuers with a prescribed process to determine and update the accredited investor status of their investors. For example, a safe harbor that permits an issuer to rely on an annual affirmation of accredited investor status by the investor, other information obtained by the issuer or on a combination of a certification and other information would likely be less costly than requiring an issuer to establish a reasonable basis for its determination through other means. These methods, however, may be less accurate in establishing whether the investor is accredited.

Alternatively, a safe harbor that permits an issuer to rely on an ongoing basis on information previously obtained relating to accredited investors status, such as allowing reliance on information obtained by the issuer at the time the securities were initially issued to the investor or at the time the securities were most recently issued to the investor would likely be even less costly than requiring the issuer to seek an annual affirmation of accredited investor status by the investor or to establish a reasonable belief

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[100] See, e.g., letters from ABA, Foley & Lardner and NYCBA.

that the investor is an accredited investor, but could also lead to more outdated information. Permitting issuers to rely on inaccurate information to determine accredited investor status could result in issuers with more than 500 non-accredited investors failing to register and leaving investors in those issuers with less information and protection under the federal securities laws. These costs may be mitigated if the safe harbor specified time limits on the permitted use of the information or if the safe harbor were conditioned upon the issuer not having information that the previously obtained information was incorrect, unreliable or had changed.

Another alternative would be a safe harbor that permits an issuer to rely on a third party certification for determining the accredited investor status of investors. We do not have adequate information about third party certification providers and the characteristics of this industry to assess this alternative in terms of reliability and cost of the provided certification services. To the extent that reputational concerns would incentivize the third party certification providers to perform reliable and updated due diligence, third party certification could potentially provide accurate information at a cost that economies of scale may lessen.

Request for Comment

18. In this release we have discussed the anticipated costs and benefits of the proposed rules. We request data to quantify the costs and the value of the benefits described throughout this release. We seek estimates of these costs and benefits, as well as any costs and benefits not described, that may result from the adoption of these proposed amendments. We also request comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked.

VI. PAPERWORK REDUCTION ACT

Certain provisions of our disclosure rules and forms applicable to issuers contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[101] The hours and costs associated with preparing and filing forms and retaining records constitute reporting and cost burdens imposed by the collection of information requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid Office of Management and Budget ("OMB") control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the collections of information.

The amendments proposed today do not alter the disclosure requirements set forth in the rules and forms; however, the JOBS Act amendments to Exchange Act Sections 12(g) and 15(d) and the proposed amendments to our rules to reflect those statutory amendments are expected to immaterially decrease the number of filings made pursuant to these rules and forms. Exchange Act Rules 12g-1, 12g-2, 12g-3, 12g-4 and 12h-3 set forth when an issuer's securities are required to be registered and the procedures for a registrant to terminate its registration or suspend its duty to file reports. The proposed amendments would provide thresholds that issuers may rely on when determining their registration and reporting obligations and would allow savings and loan holding companies to use the same registration and termination of registration or suspension of

[101] 44 U.S.C. 3501 et seq.

reporting thresholds that apply to banks and bank holding companies.[102] Exchange Act Section 12(g)(5) and the proposed amendment to Exchange Act Rule 12g5-1 also exclude securities received pursuant to certain employee compensation plans from the determination of when an issuer is required to initially register with the Commission. These changes would reduce the number of registrants required to continue filing with the Commission and also reduce the number of issuers required to initially register a class of securities.[103] For purposes of the PRA, we estimate that the amendments would not materially reduce the number of filings received, nor would the changes affect the incremental burden or cost per filing.

The titles for the affected collections of information are:

(1) "Form 10" (OMB Control No. 3235-0064); [104]

(2) "Form 20-F" (OMB Control No. 3235-0288);[105]

(3) "Form 40-F" (OMB Control No. 3235-0381);[106]

(4) "Form 10-K" (OMB Control No. 3235-0063); [107]

(5) "Form 10-Q" (OMB Control No. 3235-0070); [108]

(6) "Form 8-K" (OMB Control No. 3235-0060); [109]

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102 We are proposing to amend Rule 12g-1 to reflect the new higher thresholds in Section 12(g)(1) and to establish an increased registration threshold for savings and loan holding companies.

103 The changes to Rule 12g5-1 are expected to affect the number of issuers required to register with the Commission; however, we do not have access to data to support an estimate of the number of issuers that will not be required to file reports based on the JOBS Act amendments and our proposed implementation of such amendments. Due to the lack of data, for PRA purposes we are not intending to provide a reduced estimate of the number of issuers.

104 17 CFR 249.10.

105 17 CFR 249.220f.

106 17 CFR 249.240f.

107 17 CFR 249.310.

108 17 CFR 249.308a.

109 17 CFR 249.308.

(7) "Schedule 14A" (OMB Control No. 3235-0059); [110]

(8) "Schedule 14C" (OMB Control No. 3235-0057); [111]

(9) "Form 15" (OMB Control No. 3235-0167).

The forms were adopted under the Exchange Act and set forth the disclosure requirements for periodic, current and other reports required to be filed by issuers registered with the Commission.

We estimate that there are approximately 625 Exchange Act registrants that are bank holding companies or savings and loan holding companies. We estimate that approximately 90 bank holding companies have filed Forms 15 to terminate or suspend their reporting obligations under the Exchange Act based on the statutory changes in the JOBS Act.[112] We further estimate that approximately 90 savings and loan holding companies or similar entities with fewer than 1,200 holders of record would be eligible to file a Form 15 after our proposed changes. To put these numbers in context, the current PRA estimate for the number of annual reports on Form 10-K filed annually is 8,137. Because the proposed rule amendments do not affect our estimates of the burden or cost per filing and we do not anticipate a material decrease in the number of filings as a result of the proposed rule amendments, we are not submitting revised burden estimates for these collections of information to OMB for review in accordance with the PRA and its implementing regulations at this time.[113]

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110 17 CFR 240.14a-101.

111 17 CFR 240.14c-101.

112 After the JOBS Act became effective, we saw an increase in the number of termination and suspension of registrations by bank holding companies. We do not anticipate a similar rate of deregistration for bank holding companies after revising our rules to reflect the new, higher deregistration threshold.

113 44 U.S.C. 3507(d); 5 CFR 1320.11.

We request comment on our approach and the accuracy of the current estimates. Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission solicits comments to: (1) evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of burden of the collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are required to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090, with reference to File No. S7-12-14. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-12-14, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street, NE, Washington, DC 20549-2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VII. SMALL BUSINESS REGULATORY ENFORCEMENT FAIRNESS ACT

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"),[114] the Commission must advise OMB as to whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in:

- an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);
- a major increase in costs or prices for consumers or individual industries; or
- significant adverse effects on competition, investment or innovation.

If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

We request comment on whether our proposed amendments would be a "major rule" for purposes of SBREFA. We solicit comment and empirical data on:

- the potential effect on the U.S. economy on an annual basis;
- any potential increase in costs or prices for consumers or individual industries; and
- any potential effect on competition, investment or innovation.

We request those submitting comments to provide empirical data and other factual support for their views to the extent possible.

VIII. INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

The Commission has prepared this Initial Regulatory Flexibility Act Analysis in accordance with 5 U.S.C. 603. This Initial Regulatory Flexibility Act Analysis relates to

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[114] Pub. L. No. 104-121, Tit. II, 110 Stat. 857 (1996).

the proposed amendments to Securities Act Rule 405 and Exchange Act Rules 3b-4, 12g-1, 12g-2, 12g-3, 12g-4, 12g5-1, and 12h-3.

A. Reasons for, and Objectives of, the Proposed Action

The primary reason for, and objective of, the proposed amendments is to implement Title V and Title VI of the JOBS Act. The JOBS Act directs the Commission to issue rules to implement the changes and specifically charges the Commission with amending the definition of "held of record" and establishing a safe harbor for the determination relating to "employee compensation plan" securities. We are proposing rules that would revise existing rules to reflect the new, higher Exchange Act registration, termination of registration and suspension of reporting thresholds for banks and bank holding companies, apply the definition of "accredited investor" in Securities Act Rule 501(a) in making determinations under Exchange Act Section 12(g)(1), revise the definition of "held of record" to exclude certain securities held by persons who received them pursuant to employee compensation plans, and establish a non-exclusive safe harbor for issuers to follow when determining whether those securities are "held of record." We are also proposing to provide relief from the Exchange Act registration requirements for savings and loan holding companies by applying the same thresholds to savings and loan holding companies that apply to banks and bank holding companies. Permitting savings and loan holding companies to register, terminate registration and suspend reporting using the same thresholds as banks and bank holding companies would provide consistent treatment across depository institutions. Revising the definition and providing a non-exclusive safe harbor to issuers relating to the determination of securities "held of record" would further assist issuers in determining which holders of record they are required to count under the registration requirements of Exchange Act Section 12(g).

B. Small Entities Subject to the Proposed Rules

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[115] Exchange Act Rule 0-10(a)[116] defines an entity, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 900 issuers that are required to file with the Commission, other than investment companies, that may be considered small entities.

The proposed rules establishing the use of the Securities Act Rule 501(a) definition of "accredited investor" under Exchange Act Section 12(g)(1) and amending the definition of "held of record" to exclude certain securities held by persons who received them pursuant to employee compensation plans and establishing a non-exclusive safe harbor for issuers to follow when determining whether those securities are "held of record" may affect small issuers relying on the revised rules and safe harbor to determine the number of holders of record. While an issuer is not required to register a class of equity securities pursuant to Section 12(g) of the Exchange Act until the issuer's total assets exceed $10 million, a small business or small organization may rely on the rules when determining to whom to issue securities and whether to compensate employees with securities. By providing guidance on the meaning of the term "accredited investor" in the Exchange Act context, the proposed rules may facilitate private offerings and the ability of an issuer to determine their registration and reporting obligations. By excluding

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115 17 CFR 270.0-10(a).

116 17 CFR 240.0-10(a).

Commission.[118] With respect to the use of performance standards rather than design standards, we note that the holder of record threshold is a statutorily created design standard, requiring issuers to register if their holders of record coupled with their total assets cross the threshold. As we are modifying the definition of "held of record" and clarifying the determination of "accredited investor" under this statutory design standard, we did not evaluate whether a performance standard would be more useful.

F. Solicitation of Comment

We are soliciting comments regarding this analysis. We request comment on the number of small entities that would be subject to the rules and whether the proposed rules would have any effects that have not been discussed. We request that commenters describe the nature of any effects on small entities subject to the rules and provide empirical data to support the nature and extent of the effects.

IX. STATUTORY AUTHORITY AND TEXT OF PROPOSED RULE AMENDMENTS

The amendments contained in this release are being proposed under the authority set forth in Section 19 of the Securities Act, as amended, Sections 3(b), 12(g), 12(h), 15(d) and 23(a) of the Exchange Act, as amended, and Section 503 and Section 602 of the JOBS Act.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENTS

For the reasons set out above, the Commission proposes to amend Title 17, chapter II of the Code of Federal Regulations, as follows:

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[118] Under Section 12(g) an issuer is not required to register unless the issuer has total assets exceeding $10 million at the end of its fiscal year.

(2) Notwithstanding § 240.12g5-1(a)(7)(i)(A) of this chapter, the issuer shall not exclude securities held by persons who received the securities pursuant to an employee compensation plan.

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.

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PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The general authority citation for part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7201 et seq., and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3), and 18 U.S.C. 1350, Pub. L. 111-203, 939A, 124 Stat. 1376, 2010, and Pub. L. No. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

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4. Amend § 240.3b-4 by revising the Instruction to Paragraph (c)(1) to read as follows:

§ 240.3b-4 Definition of "foreign government," "foreign issuer" and "foreign private issuer".

* * * * *

(c) * * *

INSTRUCTION TO PARAGRAPH (c)(1): To determine the percentage of outstanding voting securities held by U.S. residents:

A. Use the method of calculating record ownership in § 240.12g3-2(a), except that:

(1) Your inquiry as to the amount of shares represented by accounts of customers resident in the United States may be limited to brokers, dealers, banks and other nominees located in:

(i) The United States,

(ii) Your jurisdiction of incorporation, and

(iii) The jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation; and

(2) Notwithstanding § 240.12g5-1(a)(7)(i)(A) of this chapter, you shall not exclude securities held by persons who received the securities pursuant to an employee compensation plan.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you 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 you or filed publicly and based on information otherwise provided to you.

* * * * *

5. Revise § 240.12g-1 and the section heading and remove the authority citation following § 240.12g-1 to read as follows:

§ 240.12g-1 Registration of securities; Exemption from section 12(g).

An issuer is not required to register a class of equity security pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)) if on the last day of its most recent fiscal year:

(a) The issuer had total assets not exceeding $10 million; or

(b) (1) The class of equity security was held of record by fewer than 2,000 persons or 500 persons who are not accredited investors (as such term is defined in § 230.501(a) of this chapter, determined on such day rather than at the time of the sale of the securities); or

(2) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); the class of equity security was held of record by fewer than 2,000 persons.

6. Revise § 240.12g-2 to read as follows:

§ 240.12g-2 Securities deemed to be registered pursuant to section 12(g)(1) upon termination of exemption pursuant to section 12(g)(2)(A) or (B).

Any class of securities which would have been required to be registered pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)) except for the fact that it was exempt

from such registration by section 12(g)(2)(A) of the Act (15 U.S.C. 78*l*(g)(2)(A)) because it was listed and registered on a national securities exchange, or by section 12(g)(2)(B) of the Act (15 U.S.C. 78*l*(g)(2)(B)) because it was issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), shall upon the termination of the listing and registration of such class or the termination of the registration of such company and without the filing of an additional registration statement be deemed to be registered pursuant to section 12(g)(1) if at the time of such termination:

(a) The issuer of such class of securities has elected to be regulated as a business development company pursuant to sections 55 through 65 of the Investment Company Act of 1940 (15 U.S.C. 80a-54 through 64) and such election has not been withdrawn; or

(b) Securities of the class are not exempt from such registration pursuant to section 12 of the Act (15 U.S.C. 78*l*) or rules thereunder and all securities of such class are held of record by 300 or more persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 or more persons.

7. Amend § 240.12g-3 by revising paragraphs (a)(2), (b)(2) and (c)(2) to read as follows:

§240.12g-3 Registration of securities of successor issuers under section 12(b) or 12(g).

(a) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in

section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * *

(b) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * *

(c) * * *

(2) All securities of such class are held of record by fewer than 300 persons, or in the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); 1,200 persons.

* * * * *

8. Amend § 240.12g-4 by revising paragraph (a) to read as follows:

§ 240.12g-4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78*l*(g)) shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 (§ 249.323 of this chapter) that the class of securities is held of record by:

(1) Fewer than 300 persons;

(2) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years; or

(3) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); fewer than 1,200 persons.

* * * * *

9. Amend § 240.12g5-1 by adding paragraph (a)(7) to read as follows:

§ 240.12g5-1 Definition of securities "held of record".

* * * * *

(a) * * *

(7)(i) For purposes of determining whether an issuer is required to register a class of equity securities with the Commission pursuant to section 12(g)(1) of the Act (15 U.S.C. 78*l*(g)(1)), an issuer may exclude securities:

(A) Held by persons who received the securities pursuant to an employee compensation plan in transactions;

(*1*) Exempt from the registration requirements of section 5 of the Securities Act of 1933 (15 U.S.C. 77e); or

(*2*) That did not involve a sale within the meaning of section 2(a)(3) of the Securities Act of 1933 (15 U.S.C. 77b(a)(3)); and

(B) Held by persons eligible to receive securities from the issuer pursuant to § 230.701(c) of this chapter who received the securities in a transaction exempt from the

registration requirements of section 5 of the Securities Act (15 U.S.C. 77e) in exchange for securities excludable under this paragraph (a)(7).

(ii) As a non-exclusive safe harbor under this paragraph (a)(7), a person will be deemed to have received the securities pursuant to an employee compensation plan if such person received the securities pursuant to a compensatory benefit plan in transactions that meet the conditions of § 230.701(c) of this chapter.

10. Amend § 240.12h-3 by revising paragraph (b)(1) to read as follows:

§ 240.12h-3 Suspension of duty to file reports under section 15(d).

* * * * *

(b) * * *

(1) Any class of securities, other than any class of asset-backed securities, held of record by:

(i) Fewer than 300 persons;

(ii) Fewer than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years; or

(iii) In the case of a bank; a savings and loan holding company, as such term is defined in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461); or a bank holding company, as such term is defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); fewer than 1,200 persons; and

* * * * *

By the Commission.

Brent J. Fields
Secretary

December 17, 2014