

Exchange Act Registration and Reporting Triggers

Written By **E. Knox Proctor V** (ekp@wardandsmith.com)

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Companies with over \$10 million in assets and which have a certain number of "record holders" of a class of securities must register under the Securities Exchange Act of 1934 ("Exchange Act") and file periodic reports (Forms 8-K, 10-Q, 10-K, etc.). In determining how many "record holders" a company has for purposes of triggering Exchange Act registration, it is important to note that shares held with brokers generally are held in "street name," so that only one "record holder" is shown for numerous shareholders.

Under prior law, a company generally became subject to Exchange Act registration if it had over \$10 million in assets and a class of equity securities held of record by 500 or more persons. The Jumpstart Our Business Startups Act ("JOBS Act") raises this limit to 2,000, *or* 500 shareholders who are not "Accredited Investors." It also generally excludes from the computation securities held by persons who received them as employee compensation. However, once Exchange Act registration has been triggered, companies generally may not de-register until they have less than 300 record holders.

There are special rules for banks and bank holding companies. The cap is 2,000 holders of record, *without* the lower threshold for record holders who are not Accredited Investors. Also banks and bank holding companies may de-register if their record holders drop below 1,200.

These JOBS Act provisions became effective immediately without the necessity for rules. In the future, the Securities and Exchange Commission ("SEC") may issue rules to address how some of the changes will be implemented and to establish some safe harbors for record holder determinations.

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