

Current Capital Crisis Calls for Removal of Outdated Impediments to Community Banks' Ability to Raise Capital—Shareholder Threshold for SEC Registration Should be Increased

- Currently, Section 12(g) of the Securities Exchange Act of 1934 requires a company with \$10 million in assets and **500 shareholders** to register its securities with the SEC and subsequently comply with the SEC's significant registration and reporting requirements, including compliance with Sarbanes-Oxley.
- While the \$10 million dollar asset size measure has twice been increased since Congress enacted Section 12(g) in 1964, the shareholder gauge of a public company, the only measurement of significance for banks has never been updated. If Congress were to update the shareholder threshold for registration, the SEC would be able to provide much needed regulatory relief for community banks.
- Banking regulators are currently calling on banks to increase their capital. **The outdated shareholder threshold level prevents small banks from raising capital from investors in their community because of fear that they will trip over the threshold number and overnight cause their regulatory compliance costs to skyrocket. It is bad policy and should be addressed during this credit crisis—not after it is over.**
- **Banks with 2000 shareholders or less are local businesses with local shareholders. These institutions had median revenue of \$8.4 million and a median 196 full-time employees as of the fourth quarter of 2009.** It is common for these banks to receive little or no analyst coverage, have a limited trading market, attract little (if any) institutional investment and, yet, incur disproportionately high costs of regulatory compliance. The small benefit that these companies receive from being public is nonetheless compounded by the disproportionately high costs of regulatory compliance placed on these smaller companies. **In the post SOX era, it is well documented that the costs of being a public company are disproportionately borne by smaller public companies.**
- The ever increasing regulatory costs are exerting significant pressure on banking organizations to reduce the number of shareholders in order either to avoid registration requirements or to de-register. However, companies that wish to de-register must either have less than \$10 million in assets or less than 300 record shareholders, and for banks who wish

to deregister, this means somehow reducing their shareholder base below 300 record shareholders.

- Reducing the number of record shareholders can be costly—and in this time of industry turmoil and credit contraction unwise. Moreover, these transactions can have negative consequences for local communities. As much as community banks would like to get out from under the heavy weight of SEC registration, they often have no desire to reduce the number of shareholders, especially if that means disenfranchising the localized ownership that makes these banks members of the community.
- Making this overdue change will help restore the principals of proportionality and balance to our securities laws so that the benefits to the investing public outweigh the regulatory costs to our nations' small businesses.
- Increasing the shareholder threshold number will significantly reduce the unwarranted regulatory hardship suffered by these small community banks and allow them to continue being lenders in their communities and job incubators on main street America.