AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

1-800-BANKERS
www.aba.com

World-Class Solutions, Leadership & Advocacy Since 1875

Sarah A. Miller
Director
Center for Securities, Trust and Investments
202-663-5325
Smiller@aba.com

February 12, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

Re: Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, File No. S7-12-05, 72 Federal Register 1384 (January 11, 2007).

Dear Ms. Morris:

The American Bankers Association ("ABA") appreciates the opportunity to comment on the Securities and Exchange Commission's ("Commission") proposed amendments to rules governing when a foreign private issuer may terminate registration under section 12(g) of the Securities Exchange Act of 1934. The ABA, on behalf of the more than two million men and women working in U.S. banks, represents every category of banking institution in this rapidly changing industry. The ABA membership includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks (collectively referred to as "banks"), making it the largest banking trade association in the country.

Although most of our member institutions are not directly affected by the rule, the ABA would like to take this opportunity to address the concept raised by the proposed revisions. In particular, we are encouraged by the Commission's willingness to consider a new liberalized test for deregistration that looks beyond the number of U.S. shareholders to the volume of domestic trading. This alternative test more appropriately gauges the interest of U.S. investors in that company and therefore the wisdom of applying certain regulations that have minimal benefits for the costs imposed.

ALTERNATIVE TESTS FOR DOMESTIC PUBLIC COMPANIES

Due to the increasing expense of being a registered public company, a number of small businesses, especially some of our member community banks, have determined that deregistration is in the best interests of their shareholders. Under Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act"), domestic companies that wish to deregister must either have less than $10 million in assets or less than 300 record shareholders. Due to the way assets are measured

in the bank, this test is quite difficult to meet for most community banks without stripping investors of one of the last opportunities to invest in a local business.[1]

As we have suggested before,[2] the ABA strongly believes that the Commission should update the shareholder threshold for registration and deregistration to reflect the dramatic changes that have occurred in the financial markets since 1964. Because ninety-nine percent of banks meet the $10 million asset test, the only criterion of importance to our member institutions in Section 12(g) is the record shareholder threshold. For example, with no effort at all to market their securities, many community banks have seen their shareholder base exceed the 500 mark as successive generations of shareholders distribute their shares amongst their descendents. Recently, not a few of these institutions have seen the cost of compliance with the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), and other recent regulatory mandates, significantly lower the profitability of the company.[3]

Although the Commission noted its intention to consider updating this threshold back in 1996, the shareholder level has remained at the same level since it was first set. The indicator of a public market back in 1964, 500 shareholders, is now due an appropriate revision to account for a more than threefold increase in the size of and participation in the securities markets by American investors in exchange-listed companies. Similarly, in 2007 dollars, after adjusting for inflation, the same market presence today that 500 shareholders would have occupied in 1964 would require six times the dollar investment, or six times the number of shareholders: $100 in 1964 would equal about $600 today. In other words, it would take approximately 3000 shareholders today to equal the market presence of 500 shareholders in 1964 assuming the average number of shares held by each shareholder and the average price of each share have not changed. Accordingly, we recommend updating the Exchange Act registration shareholder threshold to between 1500 and 3000 record shareholders. The threshold for deregistration should similarly be brought in line to between 900 and 1800 record shareholders.

In addition to updating the shareholder threshold, we strongly encourage the Commission to explore alternative tests for domestic deregistration in the spirit of the proposed approach to the foreign company deregistration. It is not

---

[1] As Daniel Blanton, President and CEO of Georgia Bank Financial Corporation, testified before The Commission's Advisory Committee on Smaller Public Companies on June 17, 2005: "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."

[2] Letter from Wayne A. Abernathy, Executive Director, Am. Bankers Assoc., to William H. Donaldson, Chairman, SEC (Mar. 31, 2005), *available at* http://www.sec.gov/news/press/4-497/4497-223.pdf.

[3] At least one of our member institutions reported spending up to six percent of *revenues* on Sarbanes-Oxley compliance alone. For small institutions this amount represents an enormous financial burden.

unreasonable to view companies whose trading volume is less than a certain percentage of the shares outstanding as showing insufficient market interest and thus essentially privately-held companies. In fact, in its 1996 final rule increasing the 12(g) asset threshold, the Commission stated that it would consider alternatives such as the adoption of an exemption for small business issuers whose public float or trading activity is so low as to show insufficient market interest, as well as the elimination of the shareholder numerical test.[4] Ten years have passed since the Commission first recognized the merits of considering trading volume as a valid measure of a publicly-traded company. The ABA encourages the Commission to renew its consideration of the merits of these alternatives for domestic issuers and not just for foreign issuers.

We also urged the Commission to consider some of the recommendations recently made by other concerned groups. According to one such recommendation, the Commission may, with the powers conferred upon it under Section 36 of the Exchange Act, exempt any company from Exchange Act requirements if it is in the public interest. Similarly, the Commission may wish to consider allowing smaller public companies to "opt out' of portions of the Sarbanes-Oxley Act as long as they disclose this fact to investors and implement other equally effective and appropriate internal controls.[5]

On a final note, the ABA understands that the Commission's Division of Corporate Finance is now considering a notice of proposed rulemaking on the definition of "held of record."[6] We implore the Commission to tread carefully in this area. Expanding this definition to include beneficial owners could lead to very significant concerns for smaller companies. Under such an approach, many unregistered community banks and small companies might be required to register under the Exchange Act and incur all the concomitant costs of being a public company. If the Commission were to take such a step, we believe that many of our smaller community banking institutions will be forced either to sell up or substantially reduce their shareholder ownership as a result of being unable to bear their new regulatory costs. As the Commission's proposal acknowledges, foreign public companies find it extremely difficult and costly to identify their beneficial shareholders in the United States. This difficulty similarly holds true for domestic companies.

CONCLUSION

The ABA appreciates the opportunity to offer our comments on the proposed rule. We hope our thoughts and recommendations will help the Commission develop an effective rule that does not present unique difficulties for

---

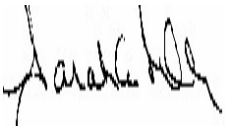
[4] SEC Relief From Reporting by Small Issuers, 61 FR 21354, 21355 (May 9, 1996).

[5] *See*, New York City Mayor Michael R. Bloomberg & US Senator Charles E. Schumer, Sustaining New York's and the US' Global Financial Services Leadership 20-21, 100-102 (Jan. 2007), *available at* http://www.nyc.gov/html/om/pdf/ny_report_final.pdf.

[6] SEC Semiannual Regulatory Agenda, 71 Fed. Reg. 74304, 74308 (Dec. 11, 2006).

the banking industry. If you have any questions or comments with respect to the issues raised in this letter, please do not hesitate to contact the undersigned or Phoebe Papageorgiou at (202) 663-5053 or phoebep@aba.com.

Sincerely yours,



Sarah A. Miller