



September 10, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington D.C. 20549-1090

Re: Exemption of Compensatory Employee Stock Options from Registration under Section 12(g) of the Securities Exchange Act of 1934; File Number S7-14-07; Release No. 34-56010; 72 Federal Register 37608 (July 10, 2007)

Dear Ms. Morris:

America's Community Bankers<sup>1</sup> ("ACB") is pleased to comment on the proposal by the U.S. Securities and Exchange Commission ("SEC") to amend its rules to provide exemptions for compensatory employee stock options ("ESOs") from the registration requirements of the Securities Exchange Act of 1934 ("Exchange Act"). The first proposed exemption would be available to private issuers that are not required to file periodic reports under Section 12(g) of the Exchange Act. The proposed exemption would not extend to the equity securities underlying the options, which would continue to be subject to the Section 12(g) registration requirements. The second proposed exemption would be available to issuers that are required to file periodic reports because the class of equity securities underlying the ESOs is already registered under Section 12(g) of the Exchange Act.

### **ACB Position**

ACB strongly supports the SEC's proposal to exempt ESOs from the registration requirements of the Exchange Act. We believe that a company's issuance of ESOs in and of itself should not trigger the Exchange Act Section 12(g) registration and periodic reporting requirements. These requirements are particularly burdensome and costly to smaller companies and community banks, both privately and publicly held. ACB applauds the SEC's consideration and implementation of the recommendation made by its Advisory Committee on Smaller Public Companies ("Advisory Committee") to provide registration relief to companies that issue ESOs.

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<sup>1</sup> America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit [www.ACB.us](http://www.ACB.us).

## **Background**

Under Section 12(g) of the Exchange Act, an issuer with 500 or more recordholders of a class of equity security and with assets in excess of \$10 million dollars must register that class of equity security with the SEC, unless there is an exemption from registration. ESOs are considered a class of equity security. Once equity securities are registered, the issuer becomes subject to the reporting requirements of Section 12(g). The SEC has proposed two exemptions that would relieve both private and public companies from the Section 12(g) registration requirements for ESOs as long as the ESOs are issued in accordance with a written plan, issued only to employees, directors, consultants and advisors (collectively, "employees"), and meet certain other specified conditions.

ACB believes that the SEC has correctly recognized that privately held companies, which include privately held community banks, have issued ESOs as a part of compensation packages to attract, retain or motivate company employees. Smaller privately held companies and community banks often struggle to recruit and retain key employees in competition with larger and publicly held companies. ESOs can be a key component to help make compensation packages offered by privately held companies competitive. As pointed out by the SEC, ESOs often are granted to more than 500 employees and trigger Section 12(g) registration if the asset threshold also is met. We strongly agree with the SEC that the proposed exemption will help privately held companies by providing certainty that ESOs that exceed 500 recordholders will not mandate Section 12(g) registration.

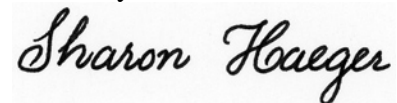
ACB agrees with the SEC that the proposed exemption permits privately held companies to determine when and under what circumstances it is appropriate to register equity under Section 12(g) and have public shareholders. This is an important decision that a private company should be permitted to make based on many factors and not on whether it issues ESOs. One of those factors is the cost and burden of the Section 12(g) registration and reporting requirements. Privately held companies may not have the resources available to comply with the Section 12(g) requirements but issue ESOs in order to grow their business and be competitive. Finally, we disagree with the SEC but agree with the Advisory Committee that ESOs do not raise the same disclosure concerns as other equity securities because they are issued to employees who are company insiders and do not need the full protections afforded by the registration requirements that are necessary for public investors.

ACB also supports the proposed exemption for ESOs issued by companies that already have a class of equity security registered under Section 12(g). A registration requirement for ESOs adds an additional layer of unnecessary and duplicative registration because the underlying shares of the ESOs are already registered under Section 12(g). In addition, holders of ESOs of registered companies would have access to the company's publicly filed Exchange Act reports and all of the protections afforded to investors by those reports.

## Conclusion

ACB appreciates the opportunity to comment on this important proposal. We would be pleased to discuss these comments with you at your convenience. If you have any questions please call Patricia Milon at (202) 857-3121 or [pmilon@acbankers.org](mailto:pmilon@acbankers.org), or the undersigned at (202) 857-3186 or [shaeger@acbankers.org](mailto:shaeger@acbankers.org).

Sincerely

A handwritten signature in black ink that reads "Sharon Haeger". The signature is written in a cursive, flowing style.

Sharon A. Haeger  
Regulatory Counsel