

JOB Act Increases Record Shareholder Threshold for Registration and Reporting

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The Jumpstart Our Business Startups Act (the "JOBS Act") passed by Congress and signed into law by the President on April 5, 2012, raises the number of "record" shareholders of a class of equity securities that triggers the requirements for the issuer to register that class of securities and to become a public reporting company. Facebook, for example, had to "go public" last year because it exceeded the previous record shareholder threshold. Now that the JOBS Act has increased this threshold, fewer private companies will be forced to become public companies, which are subject not only to registration and reporting requirements, but also beneficial ownership and insider reporting requirements, as well as proxy and tender offer rules.

Increased Threshold

Effective immediately, the JOBS Act increases the threshold number of record shareholders of a class of equity securities that triggers registration and reporting requirements under Section 12(g) of the Securities Exchange Act of 1934 (the "Exchange Act") for companies with more than \$10 million in assets from 500 to 2,000 as of the end of a company's fiscal year, provided that the company also becomes subject to these requirements if it has at least 500 record holders who are not accredited investors.

Bank holding companies with more than \$10 million in assets have a similar increased threshold – i.e., 2,000 record holders on their fiscal year end – except that they are not subject to the alternative threshold of 500 record holders who are not accredited investors.

In determining whether the thresholds have been reached, whether by a bank holding company or otherwise, record holders do not include holders of shares received through employee compensation plans or issued under the new "crowdfunding" exemption created by the JOBS Act, which is discussed in a separate Lathrop Gage alert.

Record Holders

"Record holders" or "shareholders of record" of a company are those listed on its books and records. Many shareholders of publicly traded companies are not individually counted as record holders, because they may



own their shares “in street name” through a broker. The broker would be listed as a single record holder of the issuer, even if many of the broker’s clients are beneficial owners of the issuer’s shares. Although the JOBS Act increases the record shareholder thresholds, it does not affect the distinction between record holders and beneficial owners who hold their shares “in street name.” In other words, the JOBS Act does not “look through” brokers and other record holders to the ultimate beneficial owners of shares for purposes of determining whether the threshold number of shareholders is reached.

Additional Lathrop Gage alerts discuss other important provisions of the JOBS Act. To discuss this alert or any securities law matter, please contact your Lathrop Gage attorney or any of the attorneys listed on this alert.