

GOING PRIVATE

OVERVIEW

An alternative for Community Banks that want to go private but need additional capital or are worried about community reaction.

For SEC-reporting banks and bank holding companies considering going private but struggling with the capital cost of repurchasing shares or the investor relations issues involved in cashing out shareholders, there is a way to go private and avoid many of these issues. Instead of paying cash to holders of fewer than a specified "threshold" number of shares, you can issue them a new class of securities, enabling all of your shareholders to retain an equity interest in your company. The new security is typically a new class of stock with differences in voting and dividend rights and a liquidation preference. Other features, such as call or redemption provisions or a right of first refusal in favor of the company, can also be incorporated. On a change of control of the company, the new class of stock would either convert to common stock or to cash at a rate that would provide at least the same economic benefit as received by the holders of the common stock.

This approach is ideal for institutions that need to conserve capital and have approximately 2,000 to 3,500 shareholders. This is true because in order to go (and stay) private, the common stock must generally be held by fewer than 2,000 shareholders and the new class of stock must be held by fewer than 2,000 shareholders. It is also best suited for institutions that are not immediately contemplating a Subchapter S conversion, as IRS regulations require that S corporations have only one class of stock.

Our client banks that have used this method to manage their shareholder headcount as private companies have reported high levels of shareholder acceptance and support, as the shareholders receiving the new class of stock often receive a higher dividend as a trade-off, in part, for relinquishing full voting rights.

MEET THE TEAM



James J. McAlpin Jr.

Senior Counsel, Atlanta

james.mcalpin@bclplaw.com

+1 404 572 6630

RELATED PRACTICE AREAS

- Financial Services Corporate & Regulatory Team