

IBERIABANK CORP
Form 8-K
December 08, 2008

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 5, 2008

IBERIABANK CORPORATION

(Exact name of Registrant as Specified in Charter)

Louisiana
(State or Other Jurisdiction
of Incorporation)

0-25756
(Commission File Number)

72-1280718
(I.R.S. Employer

Identification No.)

200 West Congress Street, Lafayette, Louisiana 70501

(Address of Principal Executive Offices)

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(337) 521-4003

Registrant's telephone number, including area code

NOT APPLICABLE

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry Into a Material Definitive Agreement.

On December 5, 2008, as part of the Capital Purchase Program established by the U.S. Department of the Treasury under the Emergency Economic Stabilization Act of 2008 (EESA), IBERIABANK Corporation (the Company) agreed, pursuant to a letter agreement, including the Securities Purchase Agreement Standard Terms incorporated by reference therein (the Purchase Agreement), as of December 5, 2008, issued and sold to the U.S. Department of the Treasury (the Treasury) for an aggregate purchase price of \$90 million (i) 90,000 shares (the Preferred Shares) of the Company s Fixed Rate Cumulative Perpetual Preferred Stock, Series A, having a liquidation preference of \$1,000 per share, and (ii) a ten-year warrant (the Warrant) to purchase up to 276,980 shares of the Company s voting common stock, par value \$1.00 per share (Common Stock), at an initial exercise price of \$48.74 per share.

The transaction closed on December 5, 2008 (the Closing Date). The issuance and sale of these securities was a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933.

Cumulative dividends on the Preferred Shares will accrue on the liquidation preference at a rate of 5% per annum for the first five years, and at a rate of 9% per annum thereafter, but will be paid only if, as and when declared by the Company s Board of Directors. The Preferred Shares have no maturity date and rank senior to the Common Stock with respect to the payment of dividends and distributions and amounts payable upon liquidation, dissolution and winding up of the Company. Subject to the approval of the Board of Governors of the Federal Reserve System, the Preferred Shares are redeemable at the option of the Company at 100% of their liquidation preference. Prior to this date, the Company may redeem the Preferred Shares in whole or in part at 100% of their liquidation preferences only if (i) the Company has raised aggregate gross proceeds in one or more Qualified Equity Offerings (as defined in the Purchase Agreement and set forth below) in excess of \$22.5 million and (ii) the aggregate redemption price does not exceed the aggregate net proceeds from such Qualified Equity Offerings.

The Warrant is immediately exercisable. The Treasury may not transfer a portion or portions of the Warrant with respect to, and/or exercise the Warrant for more than one-half of, the 276,980 shares of Common Stock issuable upon exercise of the Warrant, in the aggregate, until the earlier of (i) the date on which the Company has received aggregate gross proceeds of not less than \$90 million from one or more Qualified Equity Offerings (as defined in the Purchase Agreement and set forth below) and (ii) December 31, 2009. In the event the Company completes one or more Qualified Equity Offerings on or prior to December 31, 2009, that result in the Company receiving aggregate gross proceeds of at least \$90 million, the number of the shares of Common Stock underlying the portion of the Warrant then held by the Treasury will be reduced by 138,490 shares of Common Stock, one-half of the shares of Common Stock originally covered by the Warrant. For the purposes of the foregoing,

Qualified Equity Offering is defined as the sale and issuance for cash by the Company to persons other than the Company or any Company subsidiary after the Closing Date of shares of perpetual Preferred Stock,

Common Stock or any combination of such stock, that, in each case, qualify as and may be included in Tier I capital of the Company at the time of issuance under the applicable risk-based capital guidelines of the Company's federal banking agency (other than any such sales and issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans which were publicly announced, on or prior to October 13, 2008).

The Company has agreed to register the resale of the Preferred Shares and the Warrant, and the issuance of shares of Common Stock upon exercise of the Warrant, as soon as practicable after December 5, 2008. Neither the Preferred Shares nor the Warrant are subject to any contractual restrictions on transfer, except as noted above with respect to the Warrant.

The Purchase Agreement pursuant to which the Preferred Shares and the Warrant were sold contains limitations on the payment of dividends on the Common Stock (including with respect to the payment of cash dividends in excess of \$0.34 per share, which was the amount of the last regular dividend declared by the Company prior to October 14, 2008) and on the Company's ability to repurchase its Common Stock, and subjects the Company to certain of the executive compensation limitations included in the EESA. As a condition to the closing of the transaction, each of Messrs. Daryl G. Byrd, Anthony J. Restel, Michael J. Brown, John R. Davis and Michael A. Naquin, the Company's Senior Executive Officers (as defined in the Purchase Agreement) (the "Senior Executive Officers"), (i) executed a waiver (the "Waiver") voluntarily waiving any claim against the Treasury or the Company for any changes to such Senior Executive Officer's compensation or benefits that are required to comply with the regulation issued by the Treasury under the Capital Purchase Program as published in the Federal Register on October 20, 2008, and acknowledging that the regulation may require modification of the compensation, bonus, incentive and other benefit plans, arrangements and policies and agreements (including so-called "golden parachute" agreements) (collectively, "Benefit Plans") as they relate to the period the Treasury holds any equity or debt securities of the Company acquired through the TARP Capital Purchase Program; and (ii) entered into a letter agreement (the "Letter Agreement") with the Company amending the Benefit Plans with respect to such Senior Executive Officers during the period that the Treasury owns any debt or equity securities of the Company acquired pursuant to the Purchase Agreement or the Warrant, as is necessary to comply with Section 111(b) of the EESA.

Copies of the Purchase Agreement, the form of Warrant, the Articles of Amendment with respect to the Preferred Shares, the form of Waiver executed by the Senior Executive Officers and the form of Letter Agreement executed by the Senior Executive Officers are included as exhibits to this Report on Form 8-K and are incorporated by reference into these Items 1.01, 3.02, 5.02 and 5.03. The foregoing summary of certain provisions of these documents is qualified in its entirety by reference thereto.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 3.02.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) The information set forth under Item 1.01 Entry into a Material Definitive Agreement is incorporated by reference into this Item 5.02.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On December 5, 2008, the Company filed with the Secretary of State of the State of Louisiana Articles of Amendment to its Articles of Incorporation establishing the terms of the Preferred Shares. A copy of the Articles of Amendment is included as an exhibit to this Report on Form 8-K and is incorporated by reference into this Item 5.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are being filed as part of this Report on Form 8-K:

- 3.1 Articles of Amendment with respect to the Preferred Shares.
- 3.2 Warrant to Purchase up to 276,980 shares of Common Stock.
- 10.1 Letter Agreement, dated December 5, 2008, including the Securities Purchase Agreement Standard Terms incorporated by reference therein, between the Company and the United States Department of the Treasury.
- 10.2 Form of Waiver, executed by each of Messrs. Daryl G. Byrd, Anthony J. Restel, Michael J. Brown, John R. Davis and Michael A. Naquin.
- 10.3 Form of Letter Agreement, executed by each of Messrs. Daryl G. Byrd, Anthony J. Restel, Michael J. Brown, John R. Davis and Michael A. Naquin with the Company.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

IBERIABANK CORPORATION

DATE: December 8, 2008

By: /s/ Daryl G. Byrd
Daryl G. Byrd
President and Chief Executive Officer

EXHIBIT INDEX

Exhibit

Number

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