

FIRST BUSEY CORP /NV/
Form 8-K
August 25, 2011

UNITED STATES
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) **August 25, 2011**

First Busey Corporation

(Exact name of registrant as specified in its charter)

Commission File Number: 000-15950

Nevada
(State or other jurisdiction of incorporation)

37-1078406
(I.R.S. Employer Identification Number)

100 W. University Ave.

Champaign, Illinois 61820

(Address of principal executive offices, including zip code)

(217) 365-4516

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(Registrant's telephone number, including area code)

N/A

(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 (*see* General Instruction A.2 below):

- 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))
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Item 1.01. Entry into a Material Definitive Agreement.

First Busey Corporation (the Company) (NASDAQ: BUSE), the parent corporation of Busey Bank, Busey Wealth Management and FirsTech, has exited the Troubled Asset Relief Program, and announced the investment of approximately \$72.6 million in preferred stock from the Small Business Lending Fund (the SBLF) to be used to further enhance its business lending efforts. The SBLF is a U.S. Department of the Treasury lending program that encourages qualified community banks to partner with small businesses and entrepreneurs to create jobs and promote economic development in local communities.

Issuance of Preferred Stock Under Small Business Lending Fund. On August 25, 2011, the Company entered into a Securities Purchase Agreement (the Purchase Agreement) with the Secretary of the Treasury (the Treasury), pursuant to which the Company issued and sold to the Treasury 72,664 shares of its Senior Non-Cumulative Perpetual Preferred Stock, Series C (the Series C Preferred Stock), having a liquidation preference of \$1,000 per share (the Liquidation Amount), for aggregate proceeds of \$72,664,000. The Purchase Agreement was entered into, and the Series C Preferred Stock was issued, pursuant to the Treasury's SBLF program, a \$30 billion fund established under the Small Business Jobs Act of 2010 that encourages lending to small businesses by providing capital to qualified community banks with assets of less than \$10 billion. The Purchase Agreement is attached as Exhibit 10.1 hereto and incorporated by reference herein.

The Series C Preferred Stock qualifies as Tier 1 capital for the Company. Non-cumulative dividends are payable quarterly on the Series C Preferred Stock, beginning October 1, 2011. The dividend rate is calculated as a percentage of the aggregate Liquidation Amount of the outstanding Series C Preferred Stock and is based on changes in the level of Qualified Small Business Lending or QSBL (as defined in the Purchase Agreement) by the Company's wholly owned subsidiary, Busey Bank (the Bank). Based upon the increase in the Bank's level of QSBL over the baseline level calculated under the terms of the Purchase Agreement, the dividend rate for the initial dividend period, which is from the date of issuance through September 30, 2011, has been set at 5%. For the 2nd through 10th calendar quarters, the annual dividend rate may be adjusted to between 1% and 5%, to reflect the amount of change in the Bank's level of QSBL. For the 11th calendar quarter through 4.5 years after issuance, the dividend rate will be fixed at between 1% and 7% based upon the increase in QSBL as compared to the baseline. After 4.5 years from issuance, the dividend rate will increase to 9% (including a quarterly lending incentive fee of 0.5%).

The Series C Preferred Stock is non-voting, except in limited circumstances. In the event that the Company misses five dividend payments, whether or not consecutive, the holder of the Series C Preferred Stock will have the right, but not the obligation, to appoint a representative as an observer on the Company's Board of Directors. In the event that the Company misses six dividend payments, whether or not consecutive, and if the then outstanding aggregate Liquidation Amount of the Series C Preferred Stock is at least \$25,000,000, then the holder of the Series C Preferred Stock will have the right to designate two directors to the Board of Directors of the Company.

The Company may redeem the shares of Series C Preferred Stock, in whole or in part, at any time at a redemption price equal to the sum of the Liquidation Amount per share and the per share amount of any unpaid dividends for the then-current period, subject to any required prior approval by the Company's primary federal banking regulator.

The Series C Preferred Stock was issued in a private placement exempt from registration pursuant to Section 4(2) of the Securities Act of 1933, as amended. The Company has agreed to register the Series C Preferred Stock under certain circumstances set forth in Annex E to the

Purchase Agreement. The Series C Preferred Stock is not subject to any contractual restrictions on transfer.

Redemption of Series T Preferred Stock (TARP). The Series T Preferred Stock was issued to the Treasury on March 6, 2009 in connection with the Company's participation in the TARP Capital Purchase Program (CPP). On August 25, 2011, the Company entered into and consummated the transactions contemplated by a letter agreement (the Repurchase Document) with the Treasury. Under the Repurchase Document, the Company redeemed from the Treasury, in part using the proceeds from the issuance of the Series C Preferred Stock, all 100,000 outstanding shares of its Fixed Rate Cumulative Perpetual Preferred Stock, Series T, liquidation amount \$1,000 per share (the Series T Preferred Stock), for a redemption price of approximately \$100.1 million, including accrued but unpaid dividends to the date of redemption. The Company remitted a cash payment to Treasury in the amount of approximately \$27.5 million to cover the difference between the outstanding balance of the Series T Preferred Stock and the proceeds from the issuance of the Series C Preferred Stock.

As a result of its redemption of the Series T Preferred Stock, the Company is no longer subject to the limits on executive compensation and other restrictions stipulated under the CPP.

The Treasury also holds a warrant (the Warrant) to purchase 573,833 shares of the Company's common stock at an exercise price of \$13.07 per share. The Company intends to provide Treasury with a timely notice of intent to repurchase the Warrant, thus beginning the process for determining the fair market value of the Warrant. If the Company and Treasury reach agreement on the fair market value of the Warrant, the Company will repurchase and cancel the Warrant.

The Repurchase Document is attached as Exhibit 10.2 hereto and incorporated by reference herein.

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 3.03. Material Modification to Rights of Securityholders.

The information set forth in Item 1.01 under the caption Issuance of Preferred Stock Under Small Business Lending Fund is incorporated by reference into this Item 3.03.

The terms of the Series C Preferred Stock impose limits on the Company's ability to pay dividends on and repurchase shares of its common stock and other securities. In general, the Company may declare and pay dividends on its common stock or any other stock junior to the Series C Preferred Stock, or repurchase shares of any such stock, only if after payment of such dividends or repurchase of such shares the Company's Tier 1 Capital would be at least 90% of the Signing Date Tier 1 Capital (as defined and set forth in the Certificate of Designation), excluding any subsequent net charge-offs and any redemption of the Series C Preferred Stock (the Tier 1 Dividend Threshold). The Tier 1 Dividend Threshold is subject to reduction,

beginning on the 2nd anniversary and ending on the 10th anniversary of issuance of the Series C Preferred Stock, by 10% for each one 1% increase in the Bank's QSBL over the baseline level.

If, however the Company fails to declare and pay dividends on the Series C Preferred Stock in a given quarter, then during such quarter and for the next three quarters following such missed dividend payment the Company may not pay dividends on or repurchase any common stock or any other securities that are junior to (or in parity with) the Series C Preferred Stock, except in very limited circumstances.

If any Series C Preferred Stock remains outstanding on the 10th anniversary of issuance, the Company may not pay any further dividends on its common stock or any other junior stock until the Series C Preferred Stock is redeemed in full.

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

Article Fourth of the Company's Restated Articles of Incorporation, as amended by the Amendment to Articles of Incorporation dated July 31, 2007 (the "Articles"), authorizes the Company's Board of Directors to designate a class or series of preferred stock and to fix the designations, preferences, voting powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof. On August 23, 2011, the Company filed a Certificate of Designation with the Secretary of State of the State of Nevada for the purpose of amending the Articles to fix the designations, preferences, voting powers and relative, participating, optional or other special rights and qualifications, limitations or restrictions of the Series C Preferred Stock. The Certificate of Designation is attached as Exhibit 3.1 hereto and incorporated by reference herein.

Item 8.01. Other Events.

On August 25, 2011, the Company issued a press release regarding the issuance of the Series C Preferred Stock and the repurchase of the Series T Preferred Stock. The press release is attached as Exhibit 99.1 hereto and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits.* The following exhibits are filed herewith:

- 3.1 Certificate of Designation of Senior Non-Cumulative Perpetual Preferred Stock, Series C, as filed with the Secretary of State of the State of Nevada on August 23, 2011.
- 4.1 Form of Stock Certificate for Fixed Senior Non-Cumulative Perpetual Preferred Stock, Series C.
- 10.1 Securities Purchase Agreement, dated August 25, 2011, between the Company and the Secretary of the Treasury, with respect to the issuance and sale of the Series C Preferred Stock.

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- 10.2 Repurchase Document, dated August 25, 2011, between the Company and the United States Department of the Treasury, with respect to the repurchase of the Series T Preferred Stock.
- 99.1 Press Release issued by the Company, dated August 25, 2011.

SIGNATURES

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

First Busey Corporation

Dated: August 25, 2011

By:

/s/ Van A. Dukeman
Van A. Dukeman
President and Chief Executive Officer