

OLD SECOND BANCORP INC  
Form S-3  
May 13, 2010

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As filed with the Securities and Exchange Commission on May 13, 2010

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-3  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**OLD SECOND BANCORP, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**36-3143493**  
(I.R.S. Employer  
Identification Number)

**37 South River Street  
Aurora, Illinois 60507  
(630) 892-0202**

(Address, including zip code and telephone number, including area code, of registrant's principal executive offices)

**William B. Skoglund  
Chairman and Chief Executive Officer  
Old Second Bancorp, Inc.  
37 South River Street  
Aurora, Illinois 60507  
(630) 892-0202**

(Name, address, including zip code and telephone number, including area code, of agent for service)

**Copies to:**

**Robert M. Fleetwood  
Zack S. Christensen**  
Barack Ferrazzano Kirschbaum & Nagelberg LLP  
200 West Madison Street, Suite 3900  
Chicago, Illinois 60606  
(312) 984-3100

**Approximate date of commencement of proposed sale to the public:  
From time to time after the effective date of this registration statement.**

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"). (Check one):

Large accelerated filer     
  Accelerated filer     
  Non-accelerated filer     
  Smaller reporting company  
 (Do not check if a smaller reporting company)

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee(1)
Common Stock, \$1.00 par value per share(2)		\$	\$	
Preferred Stock, \$1.00 par value per share(2)				
Debt Securities(3)				
Warrants(4)				
Subscription Rights(5)				
Units				
Depositary Shares(6)				
<b>Total:</b>			<b>\$150,000,000</b>	<b>\$10,695</b>

(1) Calculated in accordance with Rule 457(o). The proposed maximum offering price per security will be determined from time to time by the registrant in connection with the issuance of the securities registered by this registration statement. The proposed maximum aggregate offering price has been estimated solely for the purpose of calculating the registration fee. In no event will the aggregate maximum offering price of all securities issued under this registration statement exceed \$150,000,000. The amount registered is not specified as to each class of securities to be registered hereunder pursuant to General Instruction II.D to Form S-3 under the Securities Act of 1933.

(2) Shares of preferred stock or common stock may be issued in primary offerings, upon conversion of debt securities or preferred stock registered hereby or upon the exercise of warrants or subscription rights to purchase preferred stock or common stock.

(3) The debt securities to be offered hereunder will consist of one or more series of senior debt securities, subordinated debt securities or junior subordinated debt securities, or any thereof, as more fully described herein.

(4) Warrants exercisable for common stock, preferred stock, depositary shares or debt securities.

(5)

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Rights evidencing the right to purchase common stock, preferred stock, depositary shares or debt securities.

(6)

The depositary shares registered hereunder will be evidenced by depositary receipts issued pursuant to a deposit agreement. If the registrant elects to offer to the public fractional interests in shares of preferred stock, then depositary receipts will be distributed to those persons purchasing the fractional interests and the shares will be issued to the depositary under the deposit agreement.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act or until the Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. These securities may not be sold until the registration statement containing this prospectus filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED MAY 13, 2010**

**PROSPECTUS**

**\$150,000,000**

**Common Stock  
Preferred Stock  
Debt Securities  
Warrants  
Subscription Rights  
Units  
Depositary Shares**

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We may offer and sell, from time to time, in one or more offerings, together or separately, any combination of the securities described in this prospectus. The aggregate initial offering price of the securities that we offer will not exceed \$150,000,000. We may offer and sell these securities to or through one or more underwriters, dealers and agents, or directly to purchasers, on a continuous or delayed basis. If an offering of securities involves any underwriters, dealers or agents, then the prospectus supplement will name the underwriters, dealers or agents and will provide information regarding any fee, commission or discount arrangements made with those underwriters, dealers or agents.

This prospectus describes some of the general terms that may apply to these securities and the general manner in which they may be offered. The specific terms of any securities to be offered, and the specific manner in which they may be offered, will be described in one or more supplements to this prospectus. This prospectus may not be used to sell securities unless accompanied by a prospectus supplement. Before investing, you should carefully read this prospectus and any related prospectus supplement.

Our common stock is listed on the Nasdaq Global Select Market under the ticker symbol "OSBC." Our principal executive offices are located at 37 South River Street, Aurora, Illinois 61801 and our telephone number is (630) 892-0202.

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**Investing in our securities involves risks. You should refer to the risk factors included in the applicable prospectus supplement and certain of our periodic reports and other information that we file with the Securities and Exchange Commission and carefully consider that information before buying our securities.**

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Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

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**These securities are not savings accounts, deposits or other obligations of any bank and are not insured or guaranteed by the Federal Deposit Insurance Corporation or any other governmental agency.**

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The date of this prospectus is \_\_\_\_\_, 2010.

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**ABOUT THIS PROSPECTUS**

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission, which we refer to as the SEC, using a shelf registration process on Form S-3. Under the shelf registration rules, using this prospectus, together with a prospectus supplement, we may sell from time to time, in one or more offerings, on a continuous or delayed basis, the securities described in this prospectus for an aggregate initial offering price of up to \$150,000,000. The registration statement that contains this prospectus (including the exhibits to the registration statement) contains additional information about us and the securities we are offering under this prospectus. You can read that registration statement at the SEC website at <http://www.sec.gov> or at the SEC office mentioned under the heading "Where You Can Find Additional Information."

This prospectus provides you with a general description of the securities we may offer. Each time we sell any of these securities, we will provide one or more prospectus supplements containing specific information about the terms of that offering. The prospectus supplements may also add, update or change information contained in this prospectus. If information in the prospectus supplement is inconsistent with the information in this prospectus, then the information in the prospectus supplement will apply and will supersede the information in this prospectus. You should carefully read both this prospectus and any prospectus supplement together with additional information described under the heading "Where You Can Find Additional Information" before you invest.

You should rely only on the information contained or incorporated by reference in this prospectus and any prospectus supplement. We have not authorized anyone to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it.

You should not assume that the information in this prospectus or any accompanying prospectus supplement or any document incorporated by reference is accurate as of any date other than the date of that document.

Neither we nor anyone acting on our behalf is making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted.

In this prospectus, the terms "Old Second," "Company," "we," "us," and "our" refer to Old Second Bancorp, Inc. and its consolidated subsidiaries, collectively, unless the context requires otherwise. References in this prospectus to "the Bank" mean Old Second National Bank, a national banking association with its main office in Aurora, Illinois, which is our wholly-owned banking subsidiary.

**OLD SECOND BANCORP, INC.**

We are a bank holding company headquartered in Aurora, Illinois. Our principal assets are the shares of stock of our bank subsidiary, Old Second National Bank, and our non-bank subsidiaries. As of March 31, 2010, we had total assets of \$2.5 billion, total deposits of \$2.2 billion and total stockholders' equity of \$187.7 million.

We conduct a full service community banking and trust business through our wholly-owned subsidiaries. Old Second National Bank is a national bank chartered by the Office of the Comptroller of the Currency, or the OCC, under the National Bank Act and has 27 offices in the greater Chicago metropolitan area, concentrated in the western and southwestern suburbs. The deposit accounts of Old Second National Bank are insured by the FDIC's Deposit Insurance Fund, and it is a member of the Federal Reserve System. Old Second Affordable Housing Fund, L.L.C. provides down payment assistance for home ownership to qualified individuals.

Our full service banking businesses includes the customary consumer and commercial products and services which banks provide. The following services are included: demand, NOW, money market,

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savings, time deposit, individual retirement and Keogh deposit accounts; commercial, industrial, consumer and real estate lending, including installment loans, student loans, farm loans, lines of credit and overdraft checking; safe deposit operations; trust services; wealth management services, and an extensive variety of additional services tailored to the needs of individual customers, such as the acquisition of U.S. Treasury notes and bonds, the sale of traveler's checks, money orders, cashier's checks and foreign currency, direct deposit, discount brokerage, debit cards, credit cards, and other special services. We also offer a full complement of electronic banking services such as Internet banking and corporate cash management, including remote deposit capture. Commercial and consumer loans are made to corporations, partnerships and individuals, primarily on a secured basis. Commercial lending focuses on business, capital, construction, inventory and real estate lending. Installment lending includes direct and indirect loans to consumers and commercial customers. We also originate residential mortgages, offering a wide range of products including conventional, government, and jumbo loans.

Our principal executive offices are located at 37 South River Road, Aurora, Illinois 60607, and our telephone number is (630) 892-0202.

Additional information about us is included in our filings with the SEC, which are incorporated by reference into this prospectus. See "Where You Can Find Additional Information" and "Documents Incorporated by Reference" in this prospectus.

**RISK FACTORS**

An investment in our securities involves a high degree of risk. Before making an investment decision, you should carefully read and consider the risk factors incorporated by reference in this prospectus, as well as those contained in any applicable prospectus supplement, as the same may be updated from time to time by our future filings with the SEC under the Securities Exchange Act of 1934, as amended, or the Exchange Act. You should also refer to other information contained in or incorporated by reference in this prospectus and any applicable prospectus supplement, including our financial statements and the related notes incorporated by reference herein. Additional risks and uncertainties not known to us at this time or that we currently deem immaterial may also materially and adversely affect our business and operations.

**USE OF PROCEEDS**

Unless the applicable prospectus supplement states otherwise, we will use the net proceeds we receive from the sale of the securities for general corporate purposes, which may include, among other things, investments in or advances to our subsidiaries (including the Bank), working capital, capital expenditures, stock repurchases, debt repayment or the financing of possible acquisitions. The prospectus supplement relating to a particular offering of securities by us will identify the use of proceeds for that offering. Until we use the net proceeds from an offering, we may place the net proceeds in temporary investments or deposit them in a bank.

**RATIO OF EARNINGS TO FIXED CHARGES AND PREFERRED STOCK DIVIDENDS**

The following table reflects our ratio of earnings to fixed charges and preferred stock dividends for each of the years in the five-year period ended December 31, 2009, as well as for the three-month period ended March 31, 2010. No shares of our preferred stock were outstanding during the years ended December 31, 2008, 2007, 2006, and 2005, and we did not pay preferred stock dividends during



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these periods. Consequently, the ratios of earnings to fixed charges and preferred stock dividends for those years are the same as the ratios of earnings to fixed charges.

	For the three months ended March 31,		For the years ended December 31,			
	2010	2009	2008	2007	2006	2005
<b>Ratio of earnings to fixed charges and preferred stock dividends:</b>						
Excluding interest on deposits	-3.18	-2.60	1.98	3.00	3.59	5.23
Including interest on deposits	-0.47	0.01	1.20	1.37	1.46	1.86

For purposes of computing the ratios of earnings to fixed charges:

earnings represent income from continuing operations before income taxes, plus fixed charges;

fixed charges, excluding interest on deposits, include interest expense (other than on deposits), the portion of net rental expense deemed to be equivalent to interest on long-term debt, discount amortization and preferred stock dividends; and

fixed charges, including interest on deposits, include all interest expense, the portion of net rental expense deemed to be equivalent to interest on long-term debt, discount amortization and preferred stock dividends.

## DESCRIPTION OF CAPITAL STOCK

### General

We have the authority to issue 40,000,000 shares of common stock, par value \$1.00 per share, and 300,000 shares of preferred stock, par value \$1.00 per share. As of March 31, 2010, we had 13,939,833 shares of common stock issued and outstanding. Additionally, 10,000 shares of preferred stock have been designated Series A Preferred Stock all of which we reserved for issuance pursuant to the Rights Agreement between the Company and the Bank, none of which have been issued. Furthermore, 73,000 shares of preferred stock have been designated as Series B Fixed Rate Cumulative Perpetual Preferred Stock, which we refer to as our Series B Preferred Stock, all of which are issued and outstanding.

The following description of the material terms of our capital stock and of our certificate of incorporation, bylaws and agreements with investors is only a summary. You should refer to our certificate of incorporation, bylaws and stockholder rights agreements, which are included as exhibits to the registration statement of which this prospectus is a part, for their complete terms.

### Common Stock

**General.** Under our certificate of incorporation, as amended, we have the authority to issue 40,000,000 shares of our common stock, par value \$1.00 per share, of which 13,939,833 shares were issued and outstanding as of March 31, 2010. As of March 31, 2010, there were 683,666 shares of our common stock underlying options that have been issued pursuant to our equity incentive plans, 215,672 shares of our common stock reserved for future issuance under our equity incentive plans, and 157,283 shares reserved for non-vested restricted stock units. Additionally, we have reserved 815,339 shares of our common stock for issuance upon exercise of the warrants that are currently held by the U.S. Treasury and issued in connection with our participation in the Capital Purchase Program. Our common stock is listed for trading on the NASDAQ Global Select Market under the symbol "OSBC."

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Each share of our common stock has the same relative rights and is identical in all respects to every other share of our common stock. Our shares of common stock are neither redeemable nor convertible, and the holders thereof have no preemptive or subscription rights to purchase any of our securities.

**Voting Rights.** Each outstanding share of our common stock is entitled to one vote on all matters submitted to a vote of stockholders. There is no cumulative voting in the election of directors.

**Liquidation Rights.** Upon our liquidation, dissolution or winding up, the holders of our common stock are entitled to receive, pro rata, our assets which are legally available for distribution, after payment of all debts and other liabilities and subject to the prior rights of any holders of preferred stock then outstanding, including the holders of shares of our Series B Preferred Stock.

**Dividends Payable on Shares of Common Stock.** In general, the holders of outstanding shares of our common stock are entitled to receive dividends out of assets legally available therefor at such times and in such amounts as our board of directors may from time to time determine. The ability of our board of directors to declare and pay dividends on our common stock may be affected by both general corporate law considerations and policies of the Board of Governors of the Federal Reserve, which we refer to herein as the Federal Reserve, applicable to bank holding companies. As a Delaware corporation, we are subject to the limitations of the Delaware General Corporation Law, or the DGCL. The DGCL allows us to pay dividends only out of our surplus (as defined and computed in accordance with the provisions of the DGCL) or, if we have no such surplus, out of our net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year. As a bank holding company, our ability to declare and pay dividends is subject to the guidelines of the Federal Reserve regarding capital adequacy and dividends. The Federal Reserve guidelines generally require us to review the effects of the cash payment of dividends on our common stock and other Tier 1 capital instruments (*i.e.*, perpetual preferred stock and trust preferred securities) in light of our earnings, capital adequacy and financial condition. In addition, as a matter of policy, the Federal Reserve has indicated that bank holding companies should not pay dividends on common stock (or make distributions on trust preferred securities) using funds from the Capital Purchase Program. As a general matter, the Federal Reserve indicates that the board of directors of a bank holding company should eliminate, defer or significantly reduce the dividends if: (i) the company's net income available to stockholders for the past four quarters, net of dividends previously paid during that period, is not sufficient to fully fund the dividends; (ii) the prospective rate of earnings retention is inconsistent with the company's capital needs and overall current and prospective financial condition; or (iii) the company will not meet, or is in danger of not meeting, its minimum regulatory capital adequacy ratios. The Federal Reserve also possesses enforcement powers over bank holding companies and their non-bank subsidiaries to prevent or remedy actions that represent unsafe or unsound practices or violations of applicable statutes and regulations. Among these powers is the ability to proscribe the payment of dividends by banks and bank holding companies.

Most of our revenues available for the payment of dividends derive from amounts paid to us by the Bank. There are various statutory limitations that limit the ability of the subsidiaries to pay dividends to us. The Bank is a national banking association and is subject to the regulations of the OCC. If the OCC determines that the Bank is engaged or is about to engage in an unsafe or unsound banking practice, the OCC may require, after notice and hearing, that the Bank cease and desist from such practice. Depending on the financial condition of the Bank, an unsafe or unsound practice could include the payment of dividends. In particular, the federal banking agencies have indicated that paying dividends that deplete a bank's capital base to an inadequate level would be an unsafe and unsound banking practice.

Under the National Bank Act, the Bank may pay dividends out of its undivided profits in such amounts and at such times as its board of directors deems prudent. Without prior OCC approval,

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however, the Bank may not pay dividends in any calendar year that, in the aggregate, exceed its year-to-date net income plus its retained net income for the two preceding years. Furthermore, under the Federal Deposit Insurance Corporation Improvement Act of 1991, a bank may not pay a dividend if the payment would cause it to become undercapitalized or if it is already undercapitalized. The federal agencies also have issued policy statements that provide that bank holding companies and insured banks generally should pay dividends only out of current operating earnings. Because of the net losses that we incurred in 2009 and the first quarter of 2010, as well as because of our current capital ratios, as of March 31, 2010, the Bank was unable to pay dividends to the Company.

In addition, the dividend rights of holders of our common stock are qualified and subject to the dividend rights of holders of our Series B Preferred Stock described below under the caption "Preferred Stock Series B Preferred Stock Priority of Dividends and Payments Upon Liquidation." In addition, the dividend rights of holders of common stock also will be subject to the dividend rights of holders of our Series A Preferred Stock if any such shares are issued and outstanding (none of which are as of the date of this prospectus). Further, the securities purchase agreement pursuant to which the U.S. Treasury purchased shares of our Series B Preferred Stock contains limitations on the payment of dividends on our common stock from and after January 16, 2009 (including with respect to the payment of cash dividends in excess of \$0.16 per share, which is the amount of the last quarterly cash dividend declared by us prior to October 14, 2008). Prior to the earlier of (i) January 16, 2012 and (ii) the date on which all shares of Series B Preferred Stock have been redeemed in whole or the U.S. Treasury has transferred the Series B Preferred Stock to unaffiliated third parties, we may not declare or pay any dividend or make any distribution on our common stock other than regular quarterly cash dividends not exceeding \$0.16 per share and dividends payable solely in common stock, without the consent of the U.S. Treasury.

**Anti-Takeover Provisions.** Our certificate of incorporation, as amended, our by-laws and our stockholder rights plan may have the effect of discouraging, delaying or preventing a change in control or an unsolicited acquisition proposal that a stockholder might consider favorable, including a proposal that might result in the payment of a premium over the market price for the shares held by stockholders. These provisions are summarized in the following paragraphs.

*Stockholder Rights Plan.* We have a stockholder rights plan that was adopted on September 17, 2002. The Plan provided for the distribution of one right on October 10, 2002, for each share of our outstanding common stock as of September 27, 2002. The rights currently have no economic value to stockholders because they cannot be exercised unless and until a person, group or entity acquires 15% or more of our common stock or announces a tender offer. The stockholder rights plan also permits our board of directors to redeem each right for \$0.01 under various circumstances. In general, the stockholder rights plan provides that if a person, group or entity acquires a 15% or larger stake in us or announces a tender offer, and our board of directors chooses not to redeem the rights, all holders of rights, other than the 15% stockholder, will be able to purchase a certain amount of our common stock for half of its market price. If triggered, the stockholder rights plan would cause substantial dilution to a person or group of persons that acquires 15% or more of our common stock on terms not approved by our board of directors. This stockholder rights plan could discourage or make more difficult a merger, tender offer or similar transaction with us.

*Authorized Shares of Capital Stock.* Authorized but unissued shares of our common stock and preferred stock under our certificate of incorporation could (within the limits imposed by applicable law and NASDAQ Marketplace Rules) be issued in one or more transactions that could make a change of control of us more difficult, and therefore more unlikely. The additional authorized shares could be used to discourage persons from attempting to gain control of us by diluting the voting power of shares then outstanding or increasing the voting power of persons who would support the board of directors in

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a potential takeover situation, including by preventing or delaying a proposed business combination that is opposed by the board of directors although perceived to be desirable by some stockholders.

*Classification of Board of Directors.* Our certificate of incorporation provides for the division of our board of directors into three classes of approximately equal size. Our directors are elected for three-year terms, and the terms of office of approximately one-third of the members of the classified board of directors expire each year. This board classification may make it more difficult for a stockholder to acquire immediate control of us and remove management by means of a proxy contest. Because the terms of approximately one-third of the incumbent directors expire each year, at least two annual elections would be necessary for stockholders to replace a majority of our directors, while a majority of directors of a non-classified board could be replaced in one annual meeting.

*Limitations on Right to Call Special Meetings; No Action by Written Consent; Stockholder Proposal Notice Requirements.* Under our by-laws, special meetings of our stockholders may be called by the Chairman of our board of directors, our President, our Secretary or by a majority of our board of directors. Our stockholders are entitled to request that our board of directors convene a special meeting of stockholders only upon the written request to the board of directors by the holders of at least 50% of the total voting power of the outstanding stock entitled to vote generally in the election of the members our board of directors. Further, our stockholders are unable to take action by written consent, and therefore, may only take action at stockholder meetings. Additionally, our by-laws require that stockholder proposals meet certain advanced notice and minimum informational requirements. These provisions could have the effect of delaying until the next annual stockholders meeting stockholder actions which are favored by the holders of a majority of our outstanding voting securities. These provisions could also discourage a third party from making a tender offer for our common stock, because even if it acquired a majority of our outstanding voting securities, it would only be able to take action as a stockholder, such as electing new directors or approving a merger, at a duly called stockholders meeting and not by written consent.

*Section 203 of the DGCL.* As we have not elected to opt out of the applicability of Section 203 of the DGCL in our certificate of incorporation, we are currently governed by Section 203 of the DGCL. Under Section 203 of the DGCL, subject to exceptions, we are prohibited from engaging in any business combination with any interested stockholder for a period of three years following the time that the stockholder became an interested stockholder. The provisions of Section 203 may encourage companies interested in acquiring us to negotiate in advance with our board of directors. These provisions may make it more difficult to accomplish transactions which stockholders may otherwise deem to be in their best interests.

**Preferred Stock**

**General.** We may issue up to 300,000 shares of preferred stock, \$1.00 par value per share, from time to time in one or more series. Our board of directors, without further approval of the stockholders, has the authority to fix the dividend rights and terms, conversion rights, voting rights, redemption rights and terms, liquidation preferences, sinking funds and any other rights, preferences, privileges and restrictions applicable to each series of preferred stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, adversely affect the voting power of the holders of our common stock.

A prospectus supplement and any other offering materials relating to any series of preferred stock issued under the registration statement of which this prospectus is a part will specify the terms of the series, including:

the maximum number of shares in the series and the designation of the series;

the terms on which dividends, if any, will be paid;

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the terms on which the shares may be redeemed, if at all;

the liquidation preference, if any;

the terms of any retirement or sinking fund for the purchase or redemption of the shares of the series;

the terms and conditions, if any, on which the shares of the series will be convertible into, or exchangeable for, shares of any other class or classes of common or preferred stock;

the voting rights, if any, of the shares of the series; and

any or all other preferences and relative, participating, operational or other special rights or qualifications, limitations or restrictions of the shares.

The description of preferred stock above and the description of the terms of a particular series of preferred stock contained in a prospectus supplement and other offering materials, if any, are not complete. You should refer to the certificate of designations with respect to a series of preferred stock for complete information concerning the terms of that series. A copy of the certificate of designations for each series of preferred stock will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement.

**Series B Preferred Stock.** On January 16, 2009, pursuant to the Capital Purchase Program, we issued to the U.S. Treasury 73,000 shares of Series B Preferred Stock having a liquidation amount per share equal to \$1,000, for a total price of \$73 million. The Series B Preferred Stock has preferential dividend and liquidation rights over our common stock. The Series B Preferred Stock pays cumulative dividends at a rate of 5% per year for the first five years and thereafter at a rate of 9% per year. The Series B Preferred Stock is non-voting, except in limited circumstances. Prior to January 16, 2012, unless we have redeemed all of the Series B Preferred Stock or the U.S. Treasury has transferred all of the Series B Preferred Stock to third parties, the consent of the U.S. Treasury will be required for us to, among other things, repurchase or otherwise acquire any of our shares of common stock or trust preferred securities, subject to certain limited exceptions. In addition, so long as any shares of our Series B Preferred Stock are outstanding, we may not repurchase or otherwise acquire any of our outstanding common stock unless we are current in our dividend payments on our outstanding Series B Preferred Stock.

*Dividends Payable on Shares of Series B Preferred Stock.* Holders of shares of Series B Preferred Stock are entitled to receive if, as and when declared by our board of directors or a duly authorized committee of the board, out of assets legally available for payment, cumulative cash dividends at a rate per annum of 5% per share on a liquidation preference of \$1,000 per share of Series B Preferred Stock with respect to each dividend period up to, but excluding, February 16, 2014. From and after February 16, 2014, holders of shares of Series B Preferred Stock are entitled to receive cumulative cash dividends at a rate per annum of 9% per share on a liquidation preference of \$1,000 per share of Series B Preferred Stock with respect to each dividend period thereafter.

Dividends are payable quarterly in arrears on each February 15, May 15, August 15 and November 15, each a dividend payment date, starting with February 15, 2009. If any dividend payment date is not a business day, then the next business day will be the applicable dividend payment date, and no additional dividends will accrue as a result of the postponement of the dividend payment date. Dividends payable during any dividend period are computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends payable with respect to the Series B Preferred Stock are payable to holders of record of shares of Series B Preferred Stock on the date that is 15 calendar days immediately preceding the applicable dividend payment date or such other record date as the board of directors or any duly authorized committee of the board determines, so long as such record date is not more than 60 nor less than 10 days prior to the applicable dividend payment date.

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If we determine not to pay any dividend or a full dividend with respect to the Series B Preferred Stock, we must provide written notice to the holders of shares of Series B Preferred Stock prior to the applicable dividend payment date. Unpaid dividends on the Series B Preferred Stock will compound. We are subject to various regulatory policies and requirements relating to the payment of dividends, including requirements to maintain adequate capital above regulatory minimums. The Federal Reserve is authorized to determine, under certain circumstances relating to the financial condition of a bank holding company, such as us, that the payment of dividends would be an unsafe or unsound practice and to prohibit payment thereof. See Item 1 of our annual report on Form 10-K for the year ended December 31, 2009 under the captions "Supervision and Regulation The Company *Dividend Payments*" and " the Bank *Dividend Payments*."

*Priority of Dividends and Payments Upon Liquidation.* With respect to the payment of dividends and the amounts to be paid upon liquidation, the Series B Preferred Stock will rank:

senior to our common stock and all other equity securities designated as ranking junior to the Series B Preferred Stock; and

at least equally with all other equity securities designated as ranking on a parity with the Series B Preferred Stock, or parity stock, including shares of our Series A Preferred Stock, with respect to the payment of dividends and distribution of assets upon our liquidation, dissolution or winding-up.

So long as any shares of Series B Preferred Stock remain outstanding, unless all accrued and unpaid dividends for all prior dividend periods have been paid or are contemporaneously declared and paid in full, we may not pay or declare any dividends on our common stock or other junior stock, other than a dividend payable solely in common stock. We and our subsidiaries also may not purchase, redeem or otherwise acquire for consideration any shares of our common stock or other junior stock unless we have paid in full all accrued dividends on the Series B Preferred Stock for all prior dividend periods, other than:

purchases, redemptions or other acquisitions of our common stock or other junior stock in connection with the administration of our employee benefit plans in the ordinary course of business pursuant to a publicly announced repurchase plan up to the increase in diluted shares outstanding resulting from the grant, vesting or exercise of equity-based compensation;

purchases or other acquisitions by any of our broker-dealer subsidiaries, of which we currently have none, solely for the purpose of market-making, stabilization or customer facilitation transactions in junior stock or parity stock in the ordinary course of its business;

purchases or other acquisitions by any of our broker-dealer subsidiaries, of which we currently have none, for resale pursuant to an offering by us of our stock that is underwritten by the related broker-dealer subsidiary;

any dividends or distributions of rights or junior stock in connection with any stockholders' rights plan or any redemption or repurchases of rights pursuant to any stockholders' rights plan;

acquisition of record ownership of junior stock or parity stock for the beneficial ownership of any other person who is not us or a subsidiary of us, including as trustee or custodian; and

the exchange or conversion of junior stock for or into other junior stock or of parity stock for or into other parity stock or junior stock but only to the extent that such acquisition is required pursuant to binding contractual agreements entered into before January 16, 2009 or any subsequent agreement for the accelerated exercise, settlement or exchange thereof for common stock.

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On any dividend payment date for which full dividends are not paid, or declared and funds set aside therefor, on the Series B Preferred Stock and any other parity stock, all dividends paid or declared for payment on that dividend payment date (or, with respect to parity stock with a different dividend payment date, on the applicable dividend date therefor falling within the dividend period and related to the dividend payment date for the Series B Preferred Stock), with respect to the Series B Preferred Stock and any other parity stock must be declared ratably among the holders of any such shares who have the right to receive dividends, in proportion to the respective amounts of the undeclared and unpaid dividends relating to the dividend period.

Subject to the foregoing, such dividends (payable in cash, stock or otherwise) as may be determined by our board of directors (or a duly authorized committee of the board) may be declared and paid on our common stock and any other stock ranking equally with or junior to the Series B Preferred Stock from time to time out of any funds legally available for such payment, and the Series B Preferred Stock will not be entitled to participate in any such dividend.

*Redemption.* Except as described below in connection with the American Recovery and Reinvestment Act of 2009, which we refer to herein as ARRA, the Series B Preferred Stock may not be redeemed prior to January 16, 2012 unless we have received aggregate gross proceeds from one or more qualified equity offerings (as described below) equal to \$18,250,000, which equals 25% of the aggregate liquidation amount of the Series B Preferred Stock on the date of issuance. In such a case, we may redeem the Series B Preferred Stock, subject to the approval of the Federal Reserve, in whole or in part, upon notice as described below, up to a maximum amount equal to the aggregate net cash proceeds received by us from such qualified equity offerings. A "qualified equity offering" is a sale and issuance for cash by us after January 16, 2009, to persons other than us or our subsidiaries, of shares of perpetual preferred stock, common stock or a combination thereof, that in each case qualify as Tier 1 capital at the time of issuance under the applicable risk-based capital guidelines of the Federal Reserve. Qualified equity offerings do not include issuances made in connection with acquisitions, issuances of trust preferred securities and issuances of common stock and/or perpetual preferred stock made pursuant to agreements or arrangements entered into, or pursuant to financing plans that were publicly announced, on or prior to October 13, 2008.

After January 16, 2012, the Series B Preferred Stock may be redeemed at any time, subject to the approval of the Federal Reserve, in whole or in part, subject to notice as described below.

Notwithstanding the foregoing, under the provisions of ARRA, as implemented by guidance issued by the U.S. Treasury, after consultation with the U.S. Treasury and Federal Reserve, we may redeem the Series B Preferred Stock from at any time, from any source of funds and without being subject to any waiting period; provided, that any such redemption must consist of at least 25% of the issued price of the Series B Preferred Stock, which for us represents \$18,250,000. In considering any redemption request, the U.S. Treasury and Federal Reserve have stated that they will use the existing supervisory procedures for approving redemption requests for capital instruments, which generally will take into account the contribution of the U.S. Treasury's investment amount to our overall soundness, capital adequacy and ability to lend. In any redemption, the redemption price will be an amount equal to the per share liquidation amount plus accrued and unpaid dividends to but excluding the date of redemption.

The Series B Preferred Stock will not be subject to any mandatory redemption, sinking fund or similar provisions. Holders of shares of Series B Preferred Stock have no right to require the redemption or repurchase of the Series B Preferred Stock.

If we seek to redeem fewer than all of the outstanding shares of Series B Preferred Stock, we will select the shares we will redeem either *pro rata* from the holders of record of shares of Series B Preferred Stock in proportion to the number of shares held by those holders or in such other manner as our board of directors or a committee thereof may determine to be fair and equitable. We will mail

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notice of any redemption of Series B Preferred Stock by first class mail, postage prepaid, addressed to the holders of record of the shares of Series B Preferred Stock to be redeemed at their respective last addresses appearing on our books. This mailing will be at least 30 days and not more than 60 days before the date fixed for redemption. Any notice mailed or otherwise given as described in this paragraph will be conclusively presumed to have been duly given, whether or not the holder receives the notice, and failure duly to give the notice by mail or otherwise, or any defect in the notice or in the mailing or provision of the notice, to any holder of Series B Preferred Stock designated for redemption will not affect the redemption of any other Series B Preferred Stock. Each notice of redemption will set forth the applicable redemption date, the redemption price, the place of redemption and the number of shares of Series B Preferred Stock we will redeem (and, if less than all shares of Series B Preferred Stock held by the applicable holder, the number of shares we will redeem from the holder).

Shares of Series B Preferred Stock that we redeem, repurchase or otherwise acquire will revert to authorized but unissued shares of our preferred stock.

*Liquidation Rights.* If we voluntarily or involuntarily liquidate, dissolve or wind up our affairs, holders of Series B Preferred Stock will be entitled to receive an amount per share, referred to as the total liquidation amount, equal to the fixed liquidation preference of \$1,000 per share, plus any accrued and unpaid dividends, whether or not declared, to the date of payment.

Holders of the Series B Preferred Stock will be entitled to receive the total liquidation amount out of our assets that are available for distribution to stockholders, after payment or provision for payment of our debts and other liabilities but before any distribution of assets is made to holders of our common stock or any other shares ranking, as to that distribution, junior to the Series B Preferred Stock.

If our assets are not sufficient to pay the total liquidation amount in full to all holders of Series B Preferred Stock and all holders of any shares of outstanding parity stock, the amounts paid to the holders of Series B Preferred Stock and other shares of parity stock will be paid *pro rata* in accordance with the respective total liquidation amount for those holders. If the total liquidation amount per share of Series B Preferred Stock has been paid in full to all holders of Series B Preferred Stock and other shares of parity stock, the holders of our common stock or any other shares ranking, as to such distribution, junior to the Series B Preferred Stock will be entitled to receive all of our remaining assets according to their respective rights and preferences.

For purposes of the liquidation rights, neither the sale, conveyance, exchange or transfer of all or substantially all of our property and assets, nor the consolidation or merger by us with or into any other corporation or by another corporation with or into us, will constitute a liquidation, dissolution or winding-up of our affairs.

*Voting Rights.* Except as indicated below or otherwise required by law, the holders of Series B Preferred Stock will not have any voting rights.

If the dividends on the Series B Preferred Stock have not been paid for an aggregate of six quarterly dividend periods or more (whether or not consecutive) the authorized number of directors then constituting our board of directors will be increased by two. Holders of Series B Preferred Stock, together with the holders of any outstanding parity stock with like voting rights, referred to as voting parity stock, voting as a single class, will be entitled to elect two additional members of our board of directors, referred to as the preferred stock directors, at the next annual meeting (or at a special meeting called for the purpose of electing the preferred stock directors prior to the next annual meeting) and at each subsequent annual meeting until all accrued and unpaid dividends for all past dividend periods have been paid in full. The election of any preferred stock director is subject to the qualification that the election would not cause us to violate the corporate governance requirement of



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the NASDAQ Global Select Market (or any other exchange on which our securities may be listed) that listed companies must have a majority of independent directors.

Upon the termination of the right of the holders of Series B Preferred Stock and voting parity stock to vote for preferred stock directors, as described above, the preferred stock directors will immediately cease to be qualified as directors, their term of office will terminate immediately and the number of authorized directors of the Company will be reduced by the number of preferred stock directors that the holders of Series B Preferred Stock and voting parity stock had been entitled to elect. The holders of a majority of shares of Series B Preferred Stock and voting parity stock, voting as a class, may remove any preferred stock director, with or without cause, and the holders of a majority of the shares Series B Preferred Stock and voting parity stock, voting as a class, may fill any vacancy created by the removal of a preferred stock director. If the office of a preferred stock director becomes vacant for any other reason, the remaining preferred stock director may choose a successor to fill such vacancy for the remainder of the unexpired term.

So long as any shares of Series B Preferred Stock are outstanding, in addition to any other vote or consent of stockholders required by law or by our certificate of incorporation, the vote or consent of the holders of at least  $66\frac{2}{3}\%$  of the shares of Series B Preferred Stock at the time outstanding, voting separately as a single class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, shall be necessary for effecting or validating:

any amendment or alteration of our certificate of incorporation to authorize or create or increase the authorized amount of, or any issuance of, any shares of, or any securities convertible into or exchangeable or exercisable for shares of, any class or series of capital stock ranking senior to the Series B Preferred Stock with respect to payment of dividends and/or distribution of assets upon our liquidation, dissolution or winding up;

any amendment, alteration or repeal of any provision of the certificate of designations for the Series B Preferred Stock so as to adversely affect the rights, preferences, privileges or voting powers of the Series B Preferred Stock; or

any consummation of a binding share exchange or reclassification involving the Series B Preferred Stock or of a merger or consolidation of us with another entity, unless the shares of Series B Preferred Stock remain outstanding following any such transaction or, if we are not the surviving entity, are converted into or exchanged for preference securities and such remaining outstanding shares of Series B Preferred Stock or preference securities have rights, preferences, privileges and voting powers that are not materially less favorable than the rights, preferences, privileges or voting powers of the Series B Preferred Stock, taken as a whole.

To the extent of the voting rights of the Series B Preferred Stock, each holder of Series B Preferred Stock will have one vote for each \$1,000 of liquidation preference to which such holder's shares of Series B Preferred Stock are entitled.

The foregoing voting provisions will not apply if, at or prior to the time when the vote or consent would otherwise be required, all outstanding shares of Series B Preferred Stock have been redeemed or called for redemption upon proper notice and sufficient funds have been set aside by us for the benefit of the holders of Series B Preferred Stock to effect the redemption.

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**DESCRIPTION OF DEBT SECURITIES**

**General**

The debt securities will be:

our direct unsecured general obligations;

either senior debt securities, subordinated debt securities or junior subordinated debt securities; and

issued under separate indentures among us and a trustee which will be named in a prospectus supplement and a supplemental indenture.

We may issue debt securities in one or more series.

If we offer senior debt securities, we will issue them under a senior indenture. If we issue subordinated debt securities or junior subordinated debentures, we will issue them under a subordinated indenture. A form of each indenture will be filed with the SEC as an exhibit to the registration statement of which this prospectus is a part or as an exhibit to a filing incorporated by reference in the registration statement. We have not restated the contemplated terms of either indenture in its entirety in this description. Investors in any debt securities we may issue should read the relevant indenture because it, and not this description, will control their rights as holders of the debt securities.

Because we are a holding company, our right and, accordingly, the right of our creditors and stockholders, including the holders of the securities offered by this prospectus and any prospectus supplement, to participate in any distribution of assets of any of our subsidiaries upon its liquidation, reorganization or similar proceeding is subject to the prior claims of creditors of that subsidiary, except to the extent that our claims as a creditor of the subsidiary may be recognized.

**Specific Terms of Each Series of Debt Securities in the Prospectus Supplement**

A prospectus supplement relating to any series of debt securities being offered will describe the specific terms of the debt securities being offered. These terms will include some or all of the following, as applicable:

the issuer of the debt securities;

the co-issuers of the debt securities, if any;

the guarantors of the debt securities, if any;

whether the debt securities are senior or subordinated debt securities and, if subordinated debt securities, whether or not they are junior to any other subordinated debt securities;

the title of the debt securities;

the total principal amount of the debt securities;

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the process to authenticate and deliver the debt securities and the application of the proceeds thereof;

the assets, if any, that are pledged as security for the payment of the debt securities;

the terms of any release, or the release and substitution of, any assets pledged as security for the payment of the debt securities;

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whether we will issue the debt securities in individual certificates to each holder in registered form, or in the form of temporary or permanent global securities held by a depository on behalf of holders;

the prices at which we will issue the debt securities;

the portion of the principal amount that will be payable if the maturity of the debt securities is accelerated;

the currency or currency unit in which the debt securities will be payable, if not U.S. dollars;

the dates on which the principal of the debt securities will be payable;

the interest rate that the debt securities will bear and the interest payment dates for the debt securities;

any conversion or exchange provisions;

any optional redemption provisions;

any sinking fund or other provisions that would obligate us to repurchase or otherwise redeem the debt securities;

whether the debt securities will be convertible into shares of common stock, shares of preferred stock or depository shares and, if so, the terms and conditions of any such conversion, and, if convertible into shares of preferred stock or depository shares, the terms of such preferred stock or depository shares;

any changes to or additional events of default or covenants; and

any other terms of the debt securities.

We may offer and sell debt securities, including original issue discount debt securities, at a substantial discount below their principal amount. The relevant prospectus supplement will describe certain U.S. federal income tax and any other considerations applicable to those securities. In addition, the prospectus supplement may describe certain U.S. federal income tax or other considerations applicable to any debt securities that are denominated in a currency other than U.S. dollars.

**Guarantees**

If specified in the prospectus supplement relating to a series of debt securities, subsidiaries of ours that are specified in the prospectus supplement may unconditionally guarantee to each holder and the trustee, on a joint and several basis (but subject, with respect to the Bank, to obtaining any required regulatory approvals), the full and prompt payment of principal of, premium, if any, and interest on the debt securities of that series when and as the same become due and payable, whether at maturity, upon redemption or repurchase, by declaration of acceleration or otherwise. If a series of debt securities is guaranteed, such series may be guaranteed by all subsidiaries other than subsidiaries without material assets. The prospectus supplement will describe any limitation on the maximum amount of any particular guarantee and the conditions under which guarantees may be released.

The guarantees will be general obligations of the guarantors. Guarantees of subordinated debt securities will be subordinated to the senior indebtedness of the guarantors on the same basis as the subordinated debt securities are subordinated to the senior indebtedness of the issuer. "Senior indebtedness" will be defined in a supplemental indenture or authorizing resolutions respecting any issuance of a series of subordinated

debt securities, and the definition will be set forth in the prospectus supplement.

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**Consolidation, Merger or Asset Sale**

Each indenture will, in general, allow us to consolidate or merge with or into another domestic entity. It will also allow us to sell, lease, transfer or otherwise dispose of all or substantially all of our assets to another domestic entity. If this happens, the remaining or acquiring entity must assume all of our responsibilities and liabilities under the indenture including the payment of all amounts due on the debt securities and performance of applicable indenture covenants.

However, each indenture will impose requirements with respect to any consolidation or merger with or into an entity, or any sale, lease, transfer or other disposition of all or substantially all of our assets, including:

the remaining or acquiring entity must be organized under the laws of the United States, any state or the District of Columbia;

the remaining or acquiring entity must assume our obligations under the indenture; and

immediately after giving effect to the transaction, no event of default may exist.

The remaining or acquiring entity will be substituted for us in the indenture with the same effect as if it had been an original party to the indenture, and we will be relieved from any further obligations under the indenture.

**No Protection in the Event of a Change of Control**

Unless otherwise set forth in the prospectus supplement, the debt securities will not contain any provisions that protect the holders of the debt securities in the event of a change of control of us or in the event of a highly leveraged transaction, whether or not such transaction results in a change of control of us.

**Modification of Indentures**

We may supplement or amend an indenture if the holders of a majority in aggregate principal amount of the outstanding debt securities of all series issued under the indenture affected by the supplement or amendment consent to it. Further, the holders of a majority in aggregate principal amount of the outstanding debt securities of any series may waive past defaults under the indenture and compliance by us with our covenants with respect to the debt securities of that series only. Those holders may not, however, waive any default in any payment on any debt security of that series or compliance with a provision that cannot be supplemented or amended without the consent of each holder affected. Without the consent of each outstanding debt security affected, no modification of an indenture or waiver may:

reduce the principal amount of debt securities whose holders must consent to an amendment, supplement or waiver;

reduce the principal of or change the fixed maturity of any debt security;

reduce or waive the premium payable upon redemption or alter or waive the provisions with respect to the redemption of the debt sec