

COLONY BANKCORP INC
Form 10-K
March 15, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K

ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
(Fee Required)
For the Fiscal Year Ended December 31, 2010

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
(No Fee Required)
For the Transition Period from _____ to _____

Commission File Number 000-12436

COLONY BANKCORP, INC.

(Exact Name of Registrant Specified in its Charter)

Georgia
(State or Other Jurisdiction of Incorporation or
Organization)

58-1492391
(I.R.S. Employer Identification Number)

115 South Grant Street
Fitzgerald, Georgia
(Address of Principal Executive Offices)

31750
(Zip Code)

(229) 426-6000
Issuer's Telephone Number, Including Area Code

Securities Registered Pursuant to Section 12(b) of the Act: None.

Securities Registered Pursuant to Section 12(g) of the Act:

Title of Each Class
Common Stock, Par Value \$1.00

Name of Each Exchange on Which Registered
The NASDAQ Stock Market

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

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Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-K in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a nonaccelerated 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 Exchange Act.

Large Accelerated Filer Accelerated Filer
Nonaccelerated Filer (Do not check if a Smaller Reporting Company
smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act): Yes No

State the aggregate market value of the voting and non-voting common equity held by nonaffiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked prices of such common equity, as of June 30, 2010: \$38,403,456 based on stock price of \$7.00.

Indicate the number of shares outstanding of each of the registrant's classes of common equity, as of the latest practicable date: 8,442,958 shares of \$1.00 par value common stock as of March 14, 2011.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the information required by Part III of this Annual Report are incorporated by reference from the Registrant's definitive Proxy Statement for the 2011 annual meeting of shareholders to be filed with Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Annual Report.

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Forward-Looking Statements and Factors that Could Affect Future Results

Certain statements contained in this Annual Report that are not statements of historical fact constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 (the Act), notwithstanding that such statements are not specifically identified. In addition, certain statements may be contained in the Company's future filings with the SEC, in press releases, and in oral and written statements made by or with the approval of the Company that are not statements of historical fact and constitute forward-looking statements within the meaning of the Act. Examples of forward-looking statements include, but are not limited to: (i) projections of revenues, income or loss, earnings or loss per share, the payment or nonpayment of dividends, capital structure and other financial items; (ii) statements of plans and objectives of Colony Bankcorp, Inc. or its management or Board of Directors, including those relating to products or services; (iii) statements of future economic performance; and (iv) statements of assumptions underlying such statements. Words such as "believes," "anticipates," "expects," "intends," "targeted" and similar expressions are intended to identify forward-looking statements but are not the exclusive means of identifying such statements.

Forward-looking statements involve risks and uncertainties that may cause actual results to differ materially from those in such statements. Factors that could cause actual results to differ from those discussed in the forward-looking statements include, but are not limited to:

- Local and regional economic conditions and the impact they may have on the Company and its customers and the Company's assessment of that impact.
- Changes in estimates of future reserve requirements based upon the periodic review thereof under relevant regulatory and accounting requirements.
- The effects of and changes in trade, monetary and fiscal policies and laws, including interest rate policies of the Federal Reserve Board.
 - Inflation, interest rate, market and monetary fluctuations.
 - Political instability.
 - Acts of war or terrorism.
- The timely development and acceptance of new products and services and perceived overall value of these products and services by users.
 - Changes in consumer spending, borrowings and savings habits.
 - Technological changes.
 - Acquisitions and integration of acquired businesses.
 - The ability to increase market share and control expenses.

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Forward-Looking Statements and Factors that Could Affect Future Results (Continued)

- The effect of changes in laws and regulations (including laws and regulations concerning taxes, banking, securities and insurance) with which the Company and its subsidiary must comply.
- The effect of changes in accounting policies and practices, as may be adopted by the regulatory agencies, as well as the Financial Accounting Standards Board and other accounting standard setters.
 - Changes in the Company's organization, compensation and benefit plans.
 - The costs and effects of litigation and of unexpected or adverse outcomes in such litigation.
 - Greater than expected costs or difficulties related to the integration of new lines of business.
 - The Company's success at managing the risks involved in the foregoing items.

Forward-looking statements speak only as of the date on which such statements are made. The Company undertakes no obligation to update any forward-looking statement to reflect events or circumstances after the date on which such statement is made, or to reflect the occurrence of unanticipated events.

Readers should carefully review all disclosures we file from time to time with the Securities and Exchange Commission (SEC).

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Part I

Item 1

Business

COLONY BANKCORP, INC.

General

Colony Bankcorp, Inc. (the “Company” or “Colony”) is a Georgia business corporation which was incorporated on November 8, 1982. The Company was organized for the purpose of operating as a bank holding company under the Federal Bank Holding Company Act of 1956, as amended, and the bank holding company laws of Georgia (Georgia Laws 1976, p. 168, et. seq.). On July 22, 1983, the Company, after obtaining the requisite regulatory approvals, acquired 100 percent of the issued and outstanding common stock of Colony Bank (formerly Colony Bank of Fitzgerald and The Bank of Fitzgerald), Fitzgerald, Georgia, through the merger of the Bank with a subsidiary of the Company which was created for the purpose of organizing the Bank into a one-bank holding company. Since that time, Colony Bank has operated as a wholly-owned subsidiary of the Company. Our business is conducted primarily through our wholly-owned subsidiary, which provides a broad range of banking services to its retail and commercial customers. The company headquarters are located at 115 South Grant Street, Fitzgerald, Georgia 31750, its telephone number is 229-426-6000 and its Internet address is <http://www.colonybank.com>. We operate twenty-nine domestic banking offices and one mortgage company office and at December 31, 2010, we had approximately \$1.28 billion in total assets, \$784.91 million in total loans, \$1.06 billion in total deposits and \$92.96 million in stockholder’s equity. Deposits are insured, up to applicable limits, by the Federal Deposit Insurance Corporation.

The Parent Company

Because Colony Bankcorp, Inc. is a bank holding company, its principal operations are conducted through its subsidiary bank, Colony Bank (the “Bank”). It has 100 percent ownership of its subsidiary and maintains systems of financial, operational and administrative controls that permit centralized evaluation of the operations of the subsidiary bank in selected functional areas including operations, accounting, marketing, investment management, purchasing, human resources, computer services, auditing, compliance and credit review. As a bank holding company, we perform certain stockholder and investor relations functions.

Colony Bank - Banking Services

Our principal subsidiary is the Bank. The Bank, headquartered in Fitzgerald, Georgia, offers traditional banking products and services to commercial and consumer customers in our markets. Our product line includes, among other things, loans to small and medium-sized businesses, residential and commercial construction and land development loans, commercial real estate loans, commercial loans, agri-business and production loans, residential mortgage loans, home equity loans, consumer loans and a variety of demand, savings and time deposit products. We also offer internet banking services, electronic bill payment services, safe deposit box rentals, telephone banking, credit and debit card services, remote depository products and access to a network of ATMs to our customers. Colony Bank conducts a general full service commercial, consumer and mortgage banking business through thirty offices located in the middle and south Georgia cities of Fitzgerald, Warner Robins, Centerville, Ashburn, Leesburg, Cordele, Albany, Thomaston, Columbus, Sylvester, Tifton, Moultrie, Douglas, Broxton, Savannah, Eastman, Chester, Soperton, Rochelle, Pitts, Quitman and Valdosta, Georgia.

For additional discussion of our loan portfolio and deposit accounts, see “Management’s Discussion of Financial Condition and Results of Operations - Loans and Deposits.”

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Item 1 (Continued)

Subordinated Debentures (Trust Preferred Securities)

During the second quarter of 2004, the Company formed Colony Bankcorp Statutory Trust III for the sole purpose of issuing \$4,500,000 in Trust Preferred Securities through a pool sponsored by FTN Financial Capital Market. The securities have a maturity of thirty years and are redeemable after five years with certain exceptions.

During the second quarter of 2006, the Company formed Colony Bankcorp Capital Trust I for the sole purpose of issuing \$5,000,000 in Trust Preferred Securities through a pool sponsored by SunTrust Bank Capital Markets. The securities have a maturity of thirty years and are redeemable after five years with certain exceptions.

During the first quarter of 2007, the Company formed Colony Bankcorp Capital Trust II for the sole purpose of issuing \$9,000,000 in Trust Preferred Securities through a pool sponsored by Trapeza Capital Management, LLC. The securities have a maturity of thirty years and are redeemable after five years with certain exceptions. Proceeds from this issuance were used to pay off trust preferred securities issued on March 26, 2002 through Colony Bankcorp Statutory Trust I.

During the third quarter of 2007, the Company formed Colony Bankcorp Capital Trust III for the sole purpose of issuing \$5,000,000 in Trust Preferred Securities through a pool sponsored by Trapeza Capital Management, LLC. The securities have a maturity of thirty years and are redeemable after five years with certain exceptions. Proceeds from this issuance were used to pay off trust preferred securities issued on December 19, 2002 through Colony Bankcorp Statutory Trust II.

Corporate Restructuring and Business Combinations

On April 30, 1984, after acquiring the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding stock of Colony Bank Wilcox (formerly Community Bank of Wilcox and Pitts Banking Company), Pitts, Wilcox County, Georgia. As part of the transaction, Colony issued an additional 17,872 shares of its \$10.00 par value common stock, all of which was exchanged with the holders of shares of common stock of Pitts Banking Company for 100 percent of the 250 issued and outstanding shares of common stock of Pitts Banking Company. Since the date of acquisition, Colony Bank Wilcox operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On November 1, 1984, after obtaining the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding common stock of Colony Bank Ashburn (formerly Ashburn Bank), Ashburn, Turner County, Georgia, for a combination of cash and interest-bearing promissory notes. Since the date of acquisition, Colony Bank Ashburn operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On September 30, 1985, after obtaining the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding common stock of Colony Bank of Dodge County, (formerly The Bank of Dodge County), Chester, Dodge County, Georgia. The stock was acquired in exchange for the issuance of 3,500 shares of common stock of Colony. Since the date of acquisition, Colony Bank of Dodge County operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

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On July 31, 1991, after obtaining the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding common stock of Colony Bank Worth, (formerly Worth Federal Savings and Loan Association and Bank of Worth), Sylvester, Worth County, Georgia. The stock was acquired in exchange for cash and the issuance of 7,661 shares of common stock of Colony for an aggregate purchase price of approximately \$718,000. Since the date of acquisition, Colony Bank Worth operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On November 8, 1996, Colony organized Colony Management Services, Inc. to provide support services to each subsidiary. Services provided include loan and compliance review, internal audit and data processing. Colony Management Services, Inc. operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On November 30, 1996, after obtaining the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding common stock of Colony Bank Southeast (formerly Broxton State Bank), Broxton, Coffee County, Georgia in a business combination accounted for as a pooling of interests. Broxton State Bank became a wholly-owned subsidiary of the Company through the exchange of 157,735 shares of the Company's common stock for all of the outstanding stock of Broxton State Bank. Since the date of acquisition, Colony Bank Southeast operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On March 2, 2000, Colony Bank Ashburn purchased the capital stock of Colony Mortgage Corp (formerly Georgia First Mortgage Company) in a business combination accounted for as a purchase. The purchase price of \$346,725 was the fair value of the net assets of Georgia First Mortgage Company at the date of purchase. Colony Mortgage Corp is primarily engaged in residential real estate mortgage lending in the state of Georgia. Colony Mortgage Corp operates as a subsidiary of Colony Bank effective with the August 1, 2008 merger.

On March 29, 2002, after obtaining the requisite regulatory approvals, the Company acquired 100 percent of the issued and outstanding stock of Colony Bank Quitman, FSB, (formerly Quitman Federal Saving Bank), Quitman, Brooks County, Georgia. Quitman Federal Savings Bank became a wholly-owned subsidiary of the Company through the exchange of 367,093 shares of the Company's common stock and cash for an aggregate acquisition price of \$7,446,163. Since the date of acquisition, Colony Bank Quitman, FSB operated as a wholly-owned subsidiary of the Company until it was merged into Colony Bank effective August 1, 2008.

On March 19, 2004, Colony Bank Ashburn purchased Flag Bank - Thomaston office in a business combination accounted for as a purchase. Since the date of acquisition, the Thomaston office operated as an office of Colony Bank Ashburn until August 1, 2008 when it became an office of Colony Bank.

On August 1, 2008, the Company effected a merger of its seven banking subsidiaries and its one nonbank subsidiary into one surviving bank subsidiary, Colony Bank (formerly Colony Bank of Fitzgerald).

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Markets and Competition

The banking industry in general is highly competitive. Our market areas of middle and south Georgia have experienced good economic and population growth the past several years, however the current downturn in the housing and real estate market that began in late 2007 along with recessionary fears has proven to be quite challenging - not only for Colony but the entire banking industry. In our markets, we face competitive pressures in attracting deposits and making loans from larger regional banks and smaller community banks, thrift institutions, credit unions, consumer finance companies, mortgage bankers, brokerage firms and insurance companies. The principal factors in competing for deposits and loans include interest rates, fee structures, range of products and services offered and convenience of office and ATM locations. The banking industry is also experiencing increased competition for deposits from less traditional sources such as money market and mutual funds. In addition, intense market demands, economic concerns, volatile interest rates and customer awareness of product and services have forced banks to be more competitive – often resulting in margin compression and a decrease in operating efficiency.

In response to competitive issues, the Company merged all of its operations into one operating subsidiary, Colony Bank, effective August 1, 2008. This consolidation effort enabled the Company to align products, pricing and marketing efforts while re-allocating resources to support management’s future growth strategies.

Correspondents

Colony Bank has correspondent relationships with the following banks: Federal Reserve Bank in Atlanta, Georgia; SunTrust Bank in Atlanta, Georgia; FTN Financial in Memphis, Tennessee, CenterState Bank in Lake Wales, Florida and Federal Home Loan Bank in Atlanta, Georgia. The correspondent relationships facilitate the transactions of business by means of loans, collections, investment services, lines of credit and exchange services. As compensation for these services, the Bank maintains balances with its correspondents in noninterest-bearing accounts and pays some service charges.

Employees

On December 31, 2010, the Company had a total of 285 full-time and 23 part-time employees. We consider our relationship with our employees to be satisfactory.

The Company has a noncontributory profit-sharing plan covering all employees subject to certain minimum age and service requirements. No Company contributions were made in 2010 due to performance, though funds in a forfeiture account where employees terminated with unvested balances were allocated for all eligible employees in 2010. In addition, the Company maintains a comprehensive employee benefit program providing, among other benefits, hospitalization, major medical, life insurance and disability insurance. Management considers these benefits to be competitive with those offered by other financial institutions in our market area. Colony’s employees are not represented by any collective bargaining group.

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SUPERVISION AND REGULATION
BANK HOLDING COMPANY REGULATION

General

Colony is a bank holding company within the meaning of the Bank Holding Company Act of 1956, as amended (BHCA). As a bank holding company registered with the Federal Reserve under the BHCA and the Georgia Department of Banking and Finance (“the Georgia Department”) under the Financial Institutions Code of Georgia, it is subject to supervision, examination and reporting by the Federal Reserve and the Georgia Department. Its activities are limited to banking, managing or controlling banks, furnishing services to or performing services for its subsidiaries, or engaging in any other activity that the Federal Reserve determines to be so closely related to banking, or managing or controlling banks, as to be a proper incident to these activities.

Colony is required to file with the Federal Reserve and the Georgia Department periodic reports and any additional information as they may require. The Federal Reserve and Georgia Department will also regularly examine the Company. The Federal Deposit Insurance Corporation (“FDIC”) and Georgia Department also examine the Bank.

Activity Limitations

The BHCA requires prior Federal Reserve approval for, among other things:

- the acquisition by a bank holding company of direct or indirect ownership or control of more than 5 percent of the voting shares or substantially all of the assets of any bank, or
 - a merger or consolidation of a bank holding company with another bank holding company.

Similar requirements are imposed by the Georgia Department.

A bank holding company may acquire direct or indirect ownership or control of voting shares of any company that is engaged directly or indirectly in banking, or managing or controlling banks, or performing services for its authorized subsidiaries. A bank holding company may also engage in or acquire an interest in a company that engages in activities that the Federal Reserve has determined by regulation or order to be so closely related to banking as to be a proper incident to these activities. The Federal Reserve normally requires some form of notice or application to engage in or acquire companies engaged in such activities. Under the BHCA, Colony will generally be prohibited from engaging in or acquiring direct or indirect control of more than 5 percent of the voting shares of any company engaged in activities other than those referred to above.

The BHCA permits a bank holding company located in one state to lawfully acquire a bank located in any other state, subject to deposit percentage, aging requirements and other restrictions. The Riegle-Neal Interstate Banking and Branching Efficiency Act also generally provides that national and state chartered banks may, subject to applicable state law, branch interstate through acquisitions of banks in other states.

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In November 1999, Congress enacted the Gramm-Leach-Bliley Act, which made substantial revisions to the statutory restrictions separating banking activities from other financial activities. Under the Gramm-Leach-Bliley Act, bank holding companies that are well capitalized, well managed and meet other conditions can elect to become “financial holding companies.” As financial holding companies, they and their subsidiaries are permitted to acquire or engage in activities that were not previously allowed bank holding companies, such as insurance underwriting, securities underwriting and distribution, travel agency activities, broad insurance agency activities, merchant banking and other activities that the Federal Reserve determines to be financial in nature or complementary to these activities. Financial holding companies continue to be subject to the overall oversight and supervision of the Federal Reserve, but the Gramm-Leach-Bliley Act applies the concept of functional regulation to the activities conducted by subsidiaries. For example, insurance activities would be subject to supervision and regulation by state insurance authorities. While Colony has not elected to become a financial holding company in order to exercise the broader activity powers provided by the Gramm-Leach-Bliley Act, it may elect to do so in the future.

Limitations on Acquisitions of Bank Holding Companies

As a general proposition, other companies seeking to acquire control of a bank holding company would require the approval of the Federal Reserve under the BHCA. In addition, individuals or groups of individuals seeking to acquire control of a bank holding company would need to file a prior notice with the Federal Reserve (which the Federal Reserve may disapprove under certain circumstances) under the Change in Bank Control Act. Control is conclusively presumed to exist if an individual or company acquires 25 percent or more of any class of voting securities of the bank holding company. Control may exist under the Change in Bank Control Act if the individual or company acquires 10 percent or more of any class of voting securities of the bank holding company.

Source of Financial Strength

Federal Reserve policy requires a bank holding company to act as a source of financial strength and to take measures to preserve and protect bank subsidiaries in situations where additional investments in a troubled bank may not otherwise be warranted. In addition, if a bank holding company has more than one bank or thrift subsidiary, each of the bank holding company’s subsidiary depository institutions is responsible for any losses to the FDIC as a result of an affiliated depository institution’s failure. As a result, a bank holding company may be required to loan money to its subsidiaries in the form of capital notes or other instruments that qualify as capital of the subsidiary bank under regulatory rules. However, any loans from the bank holding company to those subsidiary banks will likely be unsecured and subordinated to that of bank’s depositors and perhaps to other creditors of that bank.

Recent Legislation

On October 3, 2008, the Emergency Economic Stabilization Act of 2008 was enacted (“EESA”) to restore confidence and stabilize the volatility in the U.S. banking system and to encourage financial institutions to increase their lending to customers and to each other. Initially introduced as the Troubled Asset Relief Program (“TARP”), the EESA authorized the United States Department of the Treasury (“U.S. Treasury”) to purchase from financial institutions and their holding companies up to \$700 billion in mortgage loans, mortgage-related securities and certain other financial instruments, including debt and equity securities issued by financial institutions and their holding companies in a troubled asset relief program. Initially, \$350 billion or half of the \$700 billion was made immediately available to the U.S. Treasury. On January 15, 2009, the remaining \$350 billion was released to the U.S. Treasury.

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On October 14, 2008, the U.S. Treasury announced its intention to inject capital into nine large U.S. financial institutions under the TARP Capital Purchase Program (the “TARP CPP”), and since has injected capital into many other financial institutions, including the Company. The U.S. Treasury initially allocated \$250 billion towards the TARP CPP. On January 9, 2009, the Company entered into a Securities Purchase Agreement – Standard Terms with the U.S. Treasury (“Stock Purchase Agreement”), pursuant to which, among other things, the Company sold to the U.S. Treasury for an aggregate purchase price of \$28 million, preferred stock and warrants. Under the terms of the TARP CPP, the Company is prohibited from increasing dividends on its common stock, and from making certain repurchases of equity securities, including its common stock, without the U.S. Treasury’s consent. Furthermore, as long as the preferred stock issued to the U.S. Treasury is outstanding, dividend payments and repurchases or redemptions relating to certain equity securities, including the Company’s common stock, are prohibited until all accrued and unpaid dividends are paid on such preferred stock, subject to certain limited exceptions.

In order to participate in the TARP CPP, financial institutions were required to adopt certain standards for executive compensation and corporate governance. These standards generally apply to the Chief Executive Officer, Chief Financial Officer and the three next most highly compensated senior executive officers. The standards include (1) ensuring that incentive compensation for senior executives does not encourage unnecessary and excessive risks that threaten the value of the financial institution; (2) required clawback of any bonus or incentive compensation paid to a senior executive based on statements of earnings, gains or other criteria that are later proven to be materially inaccurate; (3) prohibition on making golden parachute payments to senior executives; and (4) agreement not to deduct for tax purposes executive compensation in excess of \$500,000 for each senior executive. The Company has complied with these requirements.

The bank regulatory agencies, U.S. Treasury and the Office of Special Inspector General, also created by the EESA, have issued guidance and requests to the financial institutions that participate in the TARP CPP to document their plans and use of TARP CPP funds and their plans for addressing the executive compensation requirements associated with the TARP CPP.

On February 10, 2009, the U.S. Treasury and the federal bank regulatory agencies announced in a Joint Statement a new Financial Stability Plan which would include additional capital support for banks under a Capital Assistance Program, a public-private investment fund to address existing bank loan portfolios and expanded funding for the FRB’s pending Term Asset-Backed Securities Loan Facility to restart lending and the securitization markets.

On February 17, 2009, the American Recovery and Reinvestment Act of 2009 (“ARRA”) was signed into law by President Obama. The ARRA includes a wide variety of programs intended to stimulate the economy and provide for extensive infrastructure, energy, health, and education needs. In addition, the ARRA imposes certain new executive compensation and corporate expenditure limits on all current and future TARP recipients, including the Company, until the institution has repaid the U.S. Treasury, which is now permitted under the ARRA without penalty and without the need to raise new capital, subject to the U.S. Treasury’s consultation with the recipient’s appropriate regulatory agency.

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The executive compensation standards are more stringent than those currently in effect under the TARP CPP or those previously proposed by the U.S. Treasury. The new standards include (but are not limited to) (i) prohibitions on bonuses, retention awards and other incentive compensation, other than restricted stock grants which do not fully vest during the TARP period up to one-third of an employee's total annual compensation, (ii) prohibitions on golden parachute payments for departure from a company, (iii) an expanded clawback of bonuses, retention awards, and incentive compensation if payment is based on materially inaccurate statements of earnings, revenues, gains or other criteria, (iv) prohibitions on compensation plans that encourage manipulation of reported earnings, (v) retroactive review of bonuses, retention awards and other compensation previously provided by TARP recipients if found by the U.S. Treasury to be inconsistent with the purposes of TARP or otherwise contrary to public interest, (vi) required establishment of a company-wide policy regarding "excessive or luxury expenditures," and (vii) inclusion in a participant's proxy statements for annual shareholder meetings of a nonbinding "Say on Pay" shareholder vote on the compensation of executives.

On February 23, 2009, the U.S. Treasury and the federal bank regulatory agencies issued a Joint Statement providing further guidance with respect to the Capital Assistance Program ("CAP") announced February 10, 2009, including: (i) that the CAP will be initiated on February 25, 2009 and will include "stress test" assessments of major banks and that should the "stress test" indicate that an additional capital buffer is warranted, institutions will have an opportunity to turn first to private sources of capital; otherwise the temporary capital buffer will be made available from the government; (ii) such additional government capital will be in the form of mandatory convertible preferred shares, which would be converted into common equity shares only as needed over time to keep banks in a well-capitalized position and can be retired under improved financial conditions before the conversion becomes mandatory; and (iii) previous capital injections under the TARP CPP will also be eligible to be exchanged for the mandatory convertible preferred shares. The conversion of preferred shares to common equity shares would enable institutions to maintain or enhance the quality of their capital by increasing their tangible common equity capital ratios; however, such conversions would necessarily dilute the interests of existing shareholders.

On February 25, 2009, the first day the CAP program was initiated, the U.S. Treasury released the actual terms of the program, stating that the purpose of the CAP is to restore confidence throughout the financial system that the nation's largest banking institutions have a sufficient capital cushion against larger than expected future losses, should they occur due to a more severe economic environment, and to support lending to creditworthy borrowers. Under the CAP terms, eligible U.S. banking institutions with assets in excess of \$100 billion on a consolidated basis are required to participate in coordinated supervisory assessments, which are forward-looking "stress test" assessments to evaluate the capital needs of the institution under a more challenging economic environment. Should this assessment indicate the need for the bank to establish an additional capital buffer to withstand more stressful conditions, these institutions may access the CAP immediately as a means to establish any necessary additional buffer or they may delay the CAP funding for six months to raise the capital privately. Eligible U.S. banking institutions with assets below \$100 billion may also obtain capital from the CAP. The CAP program is an additional program from the TARP CCP and is open to eligible institutions regardless of whether they participated in the TARP CCP. The deadline to apply to the CAP was May 25, 2009. The Company did not participate in the CAP program.