

BOSTON PRIVATE FINANCIAL HOLDINGS INC
Form S-8
June 23, 2010

As filed with the Securities and Exchange Commission on June 22, 2010

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Ten Post Office Square

Boston, Massachusetts 02109

Massachusetts
(State of Incorporation)

(617) 912-1900
(Address of Principal Executive Offices)
BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

04-2976299
(I.R.S. Employer Identification No.)

2010 INDUCEMENT STOCK PLAN

(Full title of the plan)

Timothy L. Vaill

Chief Executive Officer

BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

Ten Post Office Square

Boston, Massachusetts 02109

(617) 912-1900

(Name, address, and telephone number of agent for service)

With copies to:

William P. Mayer, Esq.

Paul W. Lee, Esq.

Goodwin Procter LLP

Exchange Place

Boston, Massachusetts 02109-2881

(617) 570-1000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company.

Large Accelerated Filer

Non-Accelerated Filer

Accelerated Filer

Smaller Reporting Company

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee
Common Stock, par value \$1.00 per share	400,000	\$6.51	\$2,604,000	\$185.67

- (1) This registration statement relates to 400,000 shares of common stock, par value \$1.00 per share, of Boston Private Financial Holdings, Inc. (Common Stock) that may be issued under the Boston Private Financial Holdings, Inc. 2010 Inducement Stock Plan (the Plan); plus such indeterminate number of additional shares of Common Stock as may be required pursuant to the Plan in the event of a stock dividend, stock split, recapitalization or other similar event.
- (2) This estimate is made pursuant to Rule 457(c) and (h) under the Securities Act of 1933, as amended (the Securities Act), solely for the purpose of determining the amount of the registration fee. The registration fee is based upon the average of the high and low sales prices for a share of Common Stock on June 18, 2010, as reported on the Nasdaq Global Select Market.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The document containing the information specified in this Part I will be sent or given to employees as specified by Rule 428(b)(1). Such document need not be filed with the Securities and Exchange Commission (the Commission) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424. These documents and the documents incorporated by reference in this registration statement pursuant to Item 3 of Part II of this form, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Certain Documents by Reference.

The documents listed below, which have previously been filed by Boston Private Financial Holdings, Inc. (the Company) with the Commission pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference in this registration statement:

- (a) Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed with the Commission on March 12, 2010;
- (b) Quarterly Report on Form 10-Q for the quarter ended March 31, 2010, filed with the Commission on May 7, 2010;
- (c) Definitive Proxy Statement on Schedule 14A, filed with the Commission on April 2, 2010; and
- (d) The description of the Common Stock contained in the Post-Effective Amendment No. 1 to Form S-3 on Form S-1, filed with the Commission on April 5, 2010.

In addition, all documents subsequently filed by the Company with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, on or after the date of this registration statement and

prior to the filing of a post-effective amendment to this registration statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 6. Indemnification of Directors and Officers.

The Company is a Massachusetts corporation. Reference is made to Chapter 156D of the Massachusetts Business Corporation Act (the "MBCA"). Section 8.51 of the MBCA authorizes a corporation to indemnify an individual who is a party to a proceeding because he is a director against liability incurred in the proceeding if: (1)(i) he conducted himself in good faith; (ii) he reasonably believed that his conduct was in the best interests of the corporation or that his conduct was at least not opposed to the best interests of the corporation; and (iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; or (2) he engaged in conduct for which he shall not be liable under a provision of the corporation's articles of organization. Section 8.52 of the MBCA further provides that a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding. Section 8.52 requires a corporation to indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he was a party because he was a director of the corporation against reasonable expenses incurred by him in connection with the proceeding. Section 8.56 of the MBCA provides that a corporation may indemnify and advance expenses to an officer of the corporation who is a party to a proceeding because he is an officer of the corporation to the same extent as a director. Section 6.3 of Article 6 of the Company's articles of organization provides for indemnification to the full extent permitted under the MBCA.

The Company and its directors and officers currently carry liability insurance.

Item 8. Exhibits.

The exhibits listed below represent a complete list of exhibits filed or incorporated by reference as part of this registration statement.

- 4.1 Restated Articles of Organization of Boston Private Financial Holdings, Inc. filed on May 23, 1994 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.2 Articles of Amendment filed on April 22, 1998 (incorporated herein by reference to Exhibit 3.2 to the Company's Quarterly Report on Form 10-Q filed on August 14, 2001).
- 4.3 Articles of Amendment filed on November 20, 2001 (incorporated herein by reference to Exhibit 4.3 to the Company's Registration Statement on Form S-8 filed on November 28, 2001).
- 4.4 Articles of Amendment of Boston Private Financial Holdings, Inc. filed on August 8, 2008 (incorporated by reference to the Company's Current Report on Form 8-K filed on August 11, 2008).
- 4.5 Articles of Amendment of Boston Private Financial Holdings, Inc. filed on September 30, 2008 (incorporated by reference to the Company's Quarterly Report on Form 10-Q filed on November 7, 2008).

- 4.6 Articles of Amendment of Boston Private Financial Holdings, Inc., filed on November 19, 2008, creating the Series C Preferred Stock (incorporated by reference to the Company's Current Report on Form 8-K filed on November 24, 2008).
- 4.7 Amended and Restated By-laws of Boston Private Financial Holdings, Inc., as amended (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on June 6, 2007).
- *5.1 Legal opinion from Goodwin Procter LLP.
- *23.1 Consent of KPMG LLP, as independent registered public accounting firm.
- *23.2 Consent of Hacker, Johnson and Smith PA, an independent registered public accounting firm.
- 23.3 Consent of Goodwin Procter LLP (contained in the opinion filed as Exhibit 5.1 to this registration statement).
- 24.1 Power of attorney (included in the signature page to this registration statement).
- *99.1 Boston Private Financial Holdings, Inc. 2010 Inducement Stock Plan.

* Filed herewith

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (i) and (ii) of this section do not apply if the registration statement is on Form

S-8, and information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Company pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

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- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

- (b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Company's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (c) The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Exchange Act; and, where interim financial information required to be presented by Article 3 of Regulation S-X are not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.
- (d) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by a director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Company certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Boston, The Commonwealth of Massachusetts, on this 22nd day of June, 2010.

BOSTON PRIVATE FINANCIAL HOLDINGS, INC.

By: */s/ TIMOTHY L. VAILL*
Timothy L. Vaill
Chairman and Chief Executive Officer
(Principal Executive Officer)

By: */s/ DAVID J. KAYE*
David J. Kaye
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned officers and directors of Boston Private Financial Holdings, Inc., hereby severally constitute Timothy L. Vaill and David J. Kaye and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below and in such other capacities as the undersigned may from time to time serve in the future, the registration statement filed herewith and any and all amendments to said registration statement, and generally to do all such things in our names and in our capacities as officers and directors to enable Boston Private Financial Holdings, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, as amended, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
<i>/s/ TIMOTHY L. VAILL</i> Timothy L. Vaill	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)	June 22, 2010
<i>/s/ WALTER M. PRESSEY</i> Walter M. Pressey	President and Vice Chairman	June 22, 2010
<i>/s/ DAVID J. KAYE</i> David J. Kaye	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	June 22, 2010
<i>/s/ WILLIAM A. GRATRIX</i> William A. Gratrix	Senior Vice President and Controller (Principal Accounting Officer)	June 22, 2010
<i>/s/ HERBERT S. ALEXANDER</i> Herbert S. Alexander	Director	June 22, 2010

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/s/ EUGENE S. COLANGELO	Director	June 22, 2010
Eugene S. Colangelo		
/s/ KATHLEEN M. GRAVELINE	Director	June 22, 2010
Kathleen M. Graveline		
/s/ ADOLFO HENRIQUES	Director	June 22, 2010
Adolfo Henriques		
	Director	June __, 2010
Lynn Thompson Hoffman		

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<i>/s/</i> DEBORAH F. KUENSTNER	Director	June 22, 2010
Deborah F. Kuenstner		
<i>/s/</i> JOHN MORTON III	Director	June 22, 2010
John Morton III		
	Director	June __, 2010
William J. Shea		
<i>/s/</i> DR. ALLEN L. SINAI	Director	June 22, 2010
Dr. Allen L. Sinai		
<i>/s/</i> STEPHEN M. WATERS	Director	June 22, 2010
Stephen M. Waters		

EXHIBIT INDEX

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